

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1066/Mum/2020 (Assessment Year 2007-08)

Suresh Mehta HUF C/o. Manish Metals 1002, Tardeo Tower 75-B, Tardeo Road Mumbai-400 004. PAN : AAAHM6719E (Appellant)	Vs.	ITO-19(3)(4) 2 nd Floor Matru Mandir Grant Road Mumbai-400007. (Respondent)
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Assessee by	Shri Jain Dixit
Department by	Shri Prakash Mane
Date of Hearing	21.10.2021
Date of Pronouncement	21.10.2021

ORDER

This is an appeal by the Revenue wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases vide order dated 17.12.2019 pertaining to assessment year 2007-08.

2. Brief facts of the case are that the assessee in this case is engaged into business of ferrous and non-ferrous metal trading. The assessment in this case was reopened upon receipt of information from sales tax department that assessee has made bogus purchases. The income tax officer in this case has made 100% addition on account of bogus purchases resulting in disallowance of Rs. 11,87,978/-.

3. Upon assessee's appeal learned CIT-A has restricted the same to 12.5% by holding as under :-

"4.2.5. In view of the above, it is an admitted fact that Sales Tax Department has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from the party named Sunil Metal (India) totaling

to Rs. 11,87,978/-. The appellant failed to substantiate the purchases made from the hawala dealers. The appellant could not file any of vital documents. The specific details required to establish the genuineness of purchases could not be submitted before the A.O. From the above it is clear that the addition is not only based on report of Sales Tax Department. The appellant has failed to establish the claim of purchase. However, it is also a fact that the revenue has not questioned the sales shown by the appellant. If there is a sale there has to be a corresponding purchases of inputs/raw materials/goods. It is a case where the appellant has not purchased the relevant goods from the parties whose bills have been utilized. In other words, the goods have not been purchased from the parties which have been examined by the Sales Tax Department. Only the bills of suspicious hawala dealers have been used and goods have actually been purchased from grey markets. The various judicial decision in such situation have laid down a principle that additions should be restricted to the benefits obtained by using such accommodation entry. Thus the AO is not justified to disallow entire purchases without questioning the sale. Following the ratio of Commissioner of Income-tax v. Simit P. Sheth [2013] 356 ITR 451 (Gujarat) disallowance of 12.5% of purchase will be justified. Thus disallowance is upheld however it is restricted to 12.5% of the purchases from suspicious hawala dealers. The grounds of appeal are therefore Partly Allowed.”

4. Against above order assessee is in appeal before the ITAT.
5. I have heard both the counsel and perused the record. Upon careful consideration I find that adverse inference have been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in writ petition no 2860, order dated 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However in that case all the supplies were to government agency.
6. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element

embedded in making of such bogus/unsubstantiated purchases by the assessee, I find that as held by Hon'ble High Court of Bombay in its recent judgement in the case of M. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019 in paragraph 8 thereof), the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

7. I respectfully following the aforesaid judgement of Hon'ble High Court, set aside the matter to the file of the Assessing Officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard. Learned Counsel of the assessee fairly agreed to the same.

8. In the result, assessee's appeal is partly allowed for statistical purposes.

Pronounced in the open court on 21.10.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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