

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No.118/Mum/2021 (Assessment Year 2010-11)

ITO, Ward-3(1) 2 nd Floor, Rani Mansion Murbad Road Kalyan West Mumbai-421 301 PAN : AAVFS7495Q (Appellant)	Vs.	M Sadashiv & Co Mokashi & Co., Mokashiv Bunglow Vishnu Nagar, Maharshi Karve Road, Dombivali(W)-421 202 (Respondent)
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Assessee by	Shri Rushabh-AR
Department by	Shri Milind Chavan-DR
Date of Hearing	01.11.2021
Date of Pronouncement	02.11.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1 dated 24.07.2020. The revenue is aggrieved that Ld.CIT(A) has erred in sustaining only 12.5% out of bogus purchases addition done @100% by the AO.

2. Brief facts of the case are that assessment was reopened pursuant to information from Sales tax Department that the assessee has engaged into bogus purchases. The assessee is engaged into manufacturing industry-Engineering goods. The assessee has submitted purchases vouchers and the payments were made through bank. However, drawing adverse inference for absence of transport and octroi bills and non production of the parties to make 100% addition.

3. Upon assessee's appeal Ld.CIT(A) has concluded as under:-

“Taking into account all the facts, circumstances and order of the AO, I respectfully follow the decision of the Honourable jurisdictional High Court in the case of Pooja Papers and the Hon’ble ITAT in the case of ITO 25(2)(1), Mumbai vs Actube Enterprises, Mumbai and confirm 12.5% of the bogus purchases which works out to Rs. 1,17,935/- and appellant is granted relief to the extent of Rs. 8,25,547/. Ground partly allowed.”

4. Against the above order, revenue is in appeal before the ITAT. We have heard both the parties and perused the record.

5. I find that in this case, the sales and other aspects of working have not been doubted it is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon’ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises(in Writ Petition No.2860, order dated 18.06.2014). In this case, the Hon’ble High Court has upheld 100% disallowance for the purchases said to be bogus, when sales are not doubted. However, the facts of the present 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. In such situation, in our considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases done by the Ld.CIT(A) meets the end of justice. Accordingly, we uphold the order of Ld.CIT(A).

6. The decision of N.K.Protiens relied by the revenue was a dismissal of SLP by the Hon’ble Supreme Court and has already been explained and distinguished by Hon’ble Bombay High Court in the case of Mohammad Hazi Adam & Co in ITA No.1004 of 2006, dated 11.02.2019.

7. In the result, this appeal filed by the revenue stands dismissed.

Pronounced in the open court on 02 .11.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 02 /11/2021
Thirumalesh, Sr.PS

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

Sr. No.	Details	Date	Initials	Designation
1	Draft dictated on	01.11.2021		Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			
11	Draft dictation sheets is enclosed			