

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No.304/Mum/2021
Assessment Year: 2010-11

**Income Tax Officer, Ward-3
Kalyan.**

..... Appellant

Vs.

Smt. Shilpa Sheth
421, Cheda Sadan, Shiv Mandir Road,
Dombivli (E) Thane 421201 [PAN: AMRPS1818F]

.....Respondent

Appearances:

Milind Chavan for the appellant
None for the respondent

Date of concluding the hearing : November 03, 2021
Date of pronouncement : November 03, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order 21st February 2020, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961 for the assessment year 2010-11.

2. Grievances raised by the Assessing Officer are as follows:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-1, Thane has erred in deleting the addition of Rs. 3,48,937/- out of the total addition of Rs. 3,98,785/- made on account of bogus purchases, despite holding that the purchases were not genuine and the assessee failed to prove genuineness of the transactions.

2. On the facts and in the circumstances of the case in law, Ld. CIT(1), Thane erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.

3. The appellant prays that the order of the Ld. CIT(A)-1, Thane, may be set-aside and that of the Assessing Officer may be restored.

3. Learned Departmental Representative fairly agree that a coordinate bench of this tribunal, in the case of Rollon Hardware India Pvt. Ltd., in ITA No. 1621/Mum/2018 order dated 05.11.2018, has in similar facts and circumstances *inter alia*, observed as follows:

4. In support of his case Ld. counsel of the assessee has placed reliance upon the decision of Hon'ble Gujarat High Court in the case of Pr. CIT Vs. T.R. Kapadia in Tax Appeal No.691 of 2017.

5. In this case the Hon'ble High Court has confirmed the deletion of disallowance on account of alleged bogus purchase as necessary documentary evidence for the purchase were on record.

6. The special leave petition against this order has been dismissed by the Hon'ble Supreme Court in its decision dated. 04.05.2018 S.L.P. Civil Diary No.12670/2018.

7. Up on careful consideration, I find that assessee has provided the documentary evidence for the purchase. 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 rational 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 dt. 18.06.2014. In this case the Hon'ble 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 suppliers were government agency. 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 expenses of the exchequer. In such situation in my considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases meets the end of justice. However, in this regard Ld. counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

4. I see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the coordinate bench order, I confirm action of the CIT(A) and decline to interfere in the matter.

5. In the result, this appeal is dismissed. Pronounced in the open court today on the 03rd day of November 2021.

Pramod Kumar
(Vice President)

Mumbai, dated the 03rd day of November 2021.

Copies to:

<i>(1)</i>	<i>The Appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

*Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*

Sr. No	Description	Date	Initial
1.	Draft dictated		
2	Draft placed before Author on		
3	Draft proposed & Placed before the Second Member		
4	Draft discussed/ approved by Second Member		
5	Approved draft comes to the Sr PS		
6	Kept for pronouncement on		
7	File sent to the Bench Clerk		
8	Date on which file goes to the Head Clerk		
9	Date on which file goes to the AR		
10	Date of dispatch		