

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

I.T.A. No. 1753/Mum/2019  
(Assessment Year 2009-10)

Jaferali Anwarullah Khan Room No.6, Uday Narayan Chawl, Imam Ahmed Raza Marg, Khairani Marg, Sakinaka Mumbai-400 072  PAN : AQCPK5335Q (Appellant)	Vs.	ITO, Ward-26(1)(4) Pratakshyakar Bhavan BKC, Mumbai-400 051  (Respondent)
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Assessee by	Dinkle Hariya
Department by	Airiju Jaikiran
Date of Hearing	20.10.2021
Date of Pronouncement	20.12.2021

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-38 dated 29.06.2018 and pertains to assessment year 2009-10. At the outset, it is noted that there is delay of 199 days in filing this appeal. Reasonable cause for the same has been submitted that assessee is 70 years old person that assessee was not aware of the appellate order, that assessee came to know the same only after his account was attached by the AO.

2. Upon careful consideration and hearing both the parties. I deem it appropriate to condone the delay in the substantially interest of justice.

3. The ground raised in this case is that Ld.CIT(A) erred in confirmed the addition made by the AO of Rs. 7,40,365/- on account of alleged bogus purchase.

4. In this case, assessee is engaged in the business of manufacturer of kitchen appliances. On the basis of receipt of information from sales tax department that assessee is engaged in hawala purchases, the addition was done on the adhoc basis, on finding that notice issued to the suppliers had returned unserved. Noting that sales are not doubted in this case, the AO proceeded to make 25% disallowance resulting into disallowances of Rs. 7,40,365/-. Upon assessee's appeal Ld.CIT(A) confirmed the same.

5. Against the above order, assessee has filed appeal before ITAT.

6. Upon careful consideration, I note that sales in this case has not been doubted. In such a eventuality Hon'ble jurisdictional High Court in the case of Nikunj Eximp Enterprises( in Writ Petition No.2860, order dated 18.06.2014) has deleted 100% disallowance on account of bogus purchases. However, the facts of the present case are different as assessee is not a trader. On the facts and circumstances of the case, I hold that disallowance of 12.5% serves the end of justice. I direct accordingly. Ld. Counsel of the assessee fairly agreed to the above.

7. In the result, appeal by the assessee is partly allowed.

Pronounced in the open court on 20 .12.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 20 /12/2021  
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