

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri SHAMIM YAHYA, ACCOUNTANT MEMBER

I.T.A. Nos.1721 & 1722/Mum/2019
(Assessment Years 2010-11 & 2011-12)

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| Harakchand K.Shah 23, Parsurampuriya Enclaves Haji Bapu Road, Malad(E) Mumbai-400 097 PAN : AACPS7349J (Appellant) | Vs. | ITO-30(1)(4) c-13, Pratyakshakar Bhavan, BKC Bandra(E) Mumbai-400 051 (Respondent) |
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| Assessee by | Shri Kaushal Shah |
| Department by | Shri Airiju Jaikiran |
| Date of Hearing | 20.10.2021 |
| Date of Pronouncement | 03.01.2022 |

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee, wherein the assessee are aggrieved that the Ld.CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 28.11.2018 pertaining to the assessment years 2010-11 & 2011-12 respectively.

2. In nutshell facts of the case are that assessee in this case is engaged in the business of dealer in ferrous & non ferrous metal. The assessment in this case was reopened upon receipt of information from sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However, the suppliers were not produced before the AO. Sales in this case were not doubted.

3. The income tax officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs. 14,97,284/- and Rs.5,76,082 for AY 2010-11 & 2011-12 respectively. Upon assessee's appeal Ld.CIT(A) confirmed the same.
4. Against the above order, assessee is in appeal before the ITAT. I have heard both the counsel and perused the record.
5. Upon careful consideration, I find that assessee has provided the documentary evidence for the purchase. Adverse inference has 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, 100% disallowances 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% allowance for the purchases said to be bogus, when sales are not doubted. However, in that case all the suppliers 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 judgment in the case of PCIT vs. M Haji Adam & CO.(ITA No.1004 of 2016 dated 11/02/2019 in paragraph 8 there off), the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchase at the same rate as of other genuine purchases.

7. I respectfully following the aforesaid judgment of the Hon'ble High Court set aside the matter to the file of the AO 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.

8. In the result, assessee's appeals are partly allowed.

Pronounced in the open court on 03.01.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03 /01/2022
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