

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

I.T.A. No. 419/Mum/2021
(Assessment Year 2011-12)

ITO, Ward-4(4) Room No.08, 6 th Floor A-Wing, Wagle Industrial Estate, Thane(W)-400 604	Vs.	Vikesh Laxman Save B-5, Unit No.8 Mona Industrial Estate No.1 Navghar, Vasai(E) Thane-401 210 PAN : ASXPS4916J
(Appellant)		(Respondent)

Assessee by	None
Department by	Ashish Pophare
Date of Hearing	18.11.2021
Date of Pronouncement	17.01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This is an appeal by the revenue, wherein the revenue is aggrieved that the learned Commissioner of Income Tax (Appeals) has erred in sustaining 25% disallowance on account of bogus purchases, vide order dated 02.03.2020 and pertains to assessment year 2011-12.

2. The grounds of appeal in ground No.1 read as under:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Thane erred in deleting the addition of Rs. 6,54,322/- out of the total addition of Rs. 8,72,430/- made on account of bogus purchases, despite holding that the purchases were not genuine and the assessee failed to prove genuineness of the transactions.

3. Brief facts of the case are that the assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were

made through banking channel. The AO solely relying upon sales tax information made 100% disallowance. Upon assessee's Ld.CIT(A) restricted the same to 25%

4. Against the above order, assessee is in appeal before the ITAT.

5. I have heard the Ld. DR and perused the records. Upon careful consideration, I find that assessee has provided the documentary evidence for the purchase. Adverse inference have been drawn solely upon sales tax information. I find that in this case, the sales 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% 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 on the facts of the case, I hold that order of Ld.CIT(A) disallowing 25% is appropriate. Hence, I uphold the same.

7. In the result, revenue's appeal is dismissed.

Pronounced in the open court on 17 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/01/2022

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