

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

I.T.A. No.1346/Mum/2020 (Assessment Year 2009-10)

Pradeep Manharlal Waghani 502, Manish Apartment S.V.Road, Kandivali(W) Mumbai-400 067  PAN : AAEPW8460C	Vs.	ITO-33(2)(5) C-12, Pratyakshakar Bhawan Room No.611, BKC Bandra(E) Mumbai-400 051
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Usha Gaikwad
Date of Hearing	25.04.2022
Date of Pronouncement	05 .05.2022

O R D E R

Per Shamim Yahya (AM) :-

This is an appeal by the assessee, wherein the assessee is aggrieved that the Ld.CIT(A) has erred in sustaining the addition for bogus purchase of Rs.11,19,950/- done @12.5% by AO for the AY 2009-10 vide order dated 24.10.2019.

2. Business in this case has not been dealt by revenue authorities. The assessment was reopened upon information from Sales tax department that assessee has made Rs. 89,59,600/- purchases from bogus dealers. The AO made 12.5% addition of the bogus purchase.

3. Upon assessee's appeal Ld.CIT(A) has noted that the sales have not been doubted. Accordingly placing reliance upon several case laws and upon the facts of the case, he sustained 12.5% disallowance out of the bogus purchases.

4. Against the above order, assessee is in appeal before the ITAT. I have heard the Ld. DR and perused the record.

5. 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% 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 my 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, I uphold the order of Ld.CIT(A).

6. In the result, this appeal filed by the assessee stands dismissed.

Pronounced in the open court on 05 .05.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 05 .05.2022

*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