

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 1369/Mum/2020 (A.Y. 2011-12)  
I.T.A. No. 1371/Mum/2020 (A.Y. 2010-11)

Mr. Giresh C. Shah 114/124, Lokhandwala Building, 3 <sup>rd</sup> Floor Room No. 55, Bhandari Street, Near Gol Deval Temple, Mumbai-400 004.  PAN : AMGPS5234C (Appellant)	Vs.	ITO-19(1)(3) Matru Mandir 2 <sup>nd</sup> Floor Tardwo Road Mumbai-400 007.  (Respondent)
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Assessee by	None
Department by	Ms. Usha Gaikwad
Date of Hearing	25.04.2022
Date of Pronouncement	05.05.2022

ORDER

These are appeals by the assessee wherein the assessee is aggrieved that the learned CIT(A) has enhanced the addition for bogus purchase done @ 25% by Assessing Officer by sustaining at 100% for respective assessment year.

2. In this case the nature of assessee's business has not been dealt with by revenue authority. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The AO made 25% addition of the bogus purchase as under :

A.Y. 2011-12      Rs. 24,93,734/-  
A.Y. 2010-11      Rs. 28,91,980/-

3. Up on assessee's appeal learned CIT(A) has enhanced the same to 100%.

4. Against above order assessee is in appeal before the ITAT. I have heard Id Learned Departmental Representative and perused the record. 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 rationale being no sales is possible without actual purchases. This proposition is supported from Honourable Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in Writ Petition no 2860, order dated 18.6.2014). In this case the Honourable High Court has held that hundred percent allowance for the purchases said to be bogus cannot be done, when sales are not doubted. Hence the decision of learned CIT(A) is in contravention of Hon'ble Jurisdictional High Court decision. 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 nonpayment of tax and others at the expense of the exchequer. In such situation in my considered opinion this ratio of Hon'ble Bombay High Court in the case of M. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019) needs to be followed and addition should be quantified in terms of the ratio laid down by Hon'ble High Court in the said decision. Accordingly, the issue is remitted to the file of the Assessing Officer to follow the directions as above.

5. In the result, appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced in the open court on 05.05.2022.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 05/05/2022

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//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai