

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

I.T.A. No. 2189/Mum/2018 (Assessment Year 2010-11)

Shri Kantilal Nenmal Jain 13, Building No. 105 Maruti Mandir Marg 5 th Khumbharwada Mumbai-400 004. PAN : ADCPJ9751E (Appellant)	Vs.	ITO 19(2)(2) Matru Mandir Room No. 220 Income Tax Office Tardeo, Grant Road, Mumbai-400 007. (Respondent)
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Assessee by	None
Department by	Ms. Usha Shrote
Date of Hearing	06.04.2022
Date of Pronouncement	02.05.2022

ORDER

Per Shamim Yahya (AM) :

In this appeal the assessee is aggrieved that learned CIT(A) by order dated 1.1.2018 for A.Y. 2010-11 has erred in sustaining 15% disallowance on account of bogus purchases.

2. This appeal was earlier disposed off by an ex-parte order framed on 30.4.2019. Later on the same was recalled on assessee's Miscellaneous Application to give the assessee an opportunity of being heard. After the recall appeal has been fixed on four occasions but none has appeared. Hence, I disposed of the appeal by hearing learned Departmental Representative and perusing the record.

3. Grounds of appeal read as under :

"On the facts and circumstances of the case ld. CIT(A) has erred in additions made by Assessing Officer of Rs. 12,95,749/- which is most unjustified and arbitrary."

4. The Assessing Officer in this case has made 15% addition on account of bogus purchases amounting to Rs. 12,95,749/-. Upon assessee's appeal learned CIT(A) confirmed the same. Against the above order assessee is in appeal before ITAT. I have heard learned DR and perused the records. An adjournment petition has been moved by assessee's counsel which has been rejected.

5. Upon careful consideration, I find that the assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to 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% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in Writ Petition No. 2860 order dated 18.6.2014). In this case Hon'ble High Court has upheld 100% allowance for purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to Government agency. 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. In such situation in our considered opinion on the facts and circumstances of the case 12.5% disallowance out of the bogus purchases meets the end of justice. However, in this regard note that learned counsel of the assessee has prayed before learned CIT(A) that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

6. Upon careful consideration I find considerable cogency in these line of arguments, as otherwise it will be double jeopardy to the assessee. Accordingly, I modify the order of learned CIT(A) and direct that the

disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions.

7. In the result, this appeal filed by the assessee stands partly allowed.
Order has been pronounced in the Court on 2.5.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 02/05/2022

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai