

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 3558/Mum/2019
(Assessment Year: 2010-11)

Income tax Officer-28(1)(1) Room No. 329, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vasi, Navi Mumbai-400 703	Vs.	Shri Ahmed Mohmed Vasta C-101, Millennium Park, Sector-25, Nerul, Navi Mumbai-400 706
PAN/GIR No. AAAPV 4065 E		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Jeetendra Kumar
Respondent by	:	None
Date of Hearing	:	20.10.2020
Date of Pronouncement	:	22.10.2020

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned Commissioner of Income Tax (Appeals)-26, Mumbai ('Id.CIT(A) for short) dated 29.03.2019 has reduced the addition for bogus purchase of Rs.4,24,081/- done by the Assessing Officer @ 100% by sustaining only 12.5%.

2. The assessee in this case is engaged into the business as M/s. Accurate Electric works and is engaged in business of government and municipal contractors for flood gate suppliers and services under disaster management system.

3. The assessment was reopened upon information from sales tax department that the assessee has made Rs.4,24,081/- purchases from bogus dealers. The A.O. made 100% addition of the bogus purchase.

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

5. Against above order, the Revenue is in appeal before the ITAT.

6. None appeared for and on behalf of the assessee despite notice sent. Hence, we proceeded to adjudicate the issue by hearing the Id. Departmental Representative and perusing the records.

We 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 Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in writ petition no 2860, order dt 18.6.2014). In this case the Hon'ble High Court has upheld hundred percent allowance 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 learned CIT-A meets the end of justice. Accordingly, we uphold the order of learned CIT-A.

7. The decision of N. K. Proteins relied by the Revenue was a dismissal of SLP by the Hon'ble Supreme Court and has already been explained and distinguished by the Hon'ble Bombay High Court in the case of *M Haji Adam & co* ITA no 1004 of 20016 dt 11/2/2019.

8. In the result, this appeal filed by the Revenue stands dismissed.

9. Before parting, we may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 22.10.2020

Sd/-

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 22.10.2020

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai