

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

I.T.A. No. 2278/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 2277/Mum/2019 (Assessment Year 2011-12)

ITO-22(1)(4) Mumbai	Vs.	Shri Jignesh H. Ruparelia 13, Hrivallbh CHS J.K. Mehta Road Green Street Santacruz West Mumbai-400 054. PAN : AAAPR9319M
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Kailash Gaikwad
Date of Hearing	13.10.2020
Date of Pronouncement	14.10.2020

ORDER

These are appeals by the revenue wherein the revenue is aggrieved that Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has reduced the addition for bogus purchase done @ 35% for A.Y. 2010-11 & 25% for A.Y. 2011-12 by Assessing Officer by sustaining only 12.5%.

2. The assessee is a proprietor of M/s. Varsha Lables, which is engaged in the business of sticker manufacturing. The assessment was reopened upon information from sales tax department that assessee has made purchases of Rs. 2,57,056/- for A.Y. 2010-11 & Rs. 21,28,774 for A.Y. 2011-12 from bogus dealers. The Assessing Officer made 35% addition of the bogus purchase amounting to Rs. 89,970/- for A.Y. 2011-12 and @ 25% for Rs. 4,25,754/- for A.Y. 2010-11.

3. Against above order revenue is in appeals before the ITAT. None appeared on behalf of the assessee during the course of virtual hearing. 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 dt. 18.6.2014). In this case the honourable 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 our 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 I uphold the order of learned CIT-A.

4. In the result these appeals filed by the revenue stand dismissed.

5. Before parting I 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 ITAT Rules on 14.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14/10/2020

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