

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI VIKAS AWASTHY, JM**

ITA No. 3094/Mum/2019
(Assessment Year: 2011-12)

ITO-33(2)(2) 848, 8 th Floor, Kautilya Bhavan, BKC, Bandra (E), Mumbai-400 051	Vs.	Shri Ketan Gokuldas Badiani D-303, 3 rd Floor, Bhoomi Enclave CHS, Mahavir Nagar, Dahanukarwadi, Kandivali (W), Mumbai-400 067
PAN/GIR No. AJAPB 1472 C		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Gurbinder Singh
Respondent by	:	None

Date of Hearing	:	16.12.2020
Date of Pronouncement	:	01.01.2021

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)-45, Mumbai ('ld.CIT(A) for short) dated 21.01.2019 has reduced the addition for bogus purchase of Rs.3,12,24,345/- done @ 100% by the Assessing Officer (A.O. for short) by sustaining only 5% for the assessment year (A.Y.) 2011-12.

2. The assessee in this case is engaged into the business of trading in personal articles like belts, wallets and buckles, etc.

3. The assessment was reopened upon information from the Sales Tax Department that the assessee has made Rs.3,12,24,345/- purchases from bogus dealers. The A.O. made 100% addition of the bogus purchase.

4. Upon assessee's appeal, the Id.CIT(A) noted that the sales have not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case, he sustained 5% disallowance out of the bogus purchases.

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

6. We have heard the learned departmental representative and perused the records. We 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 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 the 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.

7. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by Hon'ble Bombay High Court in its recent judgement in the case of *Principle Commissioner of income tax vs. M Haji Adam & Co* (in ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 thereof), the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

8. We respectfully following the aforesaid judgment of the Hon'ble High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard.

9. In the result, the Revenue's appeal is partly allowed.

*Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by
placing the details on the notice board on 01.01.2021*

Sd/-
(Vikas Awasthy)
Judicial Member

Mumbai; Dated : 01.01.2021
Roshani, Sr. PS

Sd/-
(Shamim Yahya)
Accountant Member

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