

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

I.T.A. No. 1328/Mum/2019 (Assessment Year 2011-12)  
I.T.A. No. 1329/Mum/2019 (Assessment Year 2010-11)  
I.T.A. No. 1330/Mum/2019 (Assessment Year 2009-10)

ITO-28(3)(5) Room No. 323,3 <sup>rd</sup> Floor 6 <sup>th</sup> Tower Vashi Railway Station Complex, Vashi Navi Mumbai-400 703. (Appellant)	Vs.	M/s. Tristar Engineering & Chemical Company W41B, MIDC, Rabale Navi Mumbai-400 701.  PAN : AAAFT1005G (Respondent)
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Assessee by	Shri Hardik Shah
Department by	Ms. Smita Verma
Date of Hearing	17.12.2020
Date of Pronouncement	01.01.2021

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 by sustaining only 12.5% of the disallowance for bogus purchases.

2. The assessee in this case is engaged into the business of supplier of industrial heating and filtration systems. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The Assessing Officer made addition of the bogus purchase as under :-

Assessment year	Amount Rs.
2009-10 @ 25%	81,640/-
2010-11 @ 35%	1,98,815/-
2011-12 @ 25%	95,510/-

3. Up on assessee's appeal learned CIT(A) has noted that the sales has not been doubted. Accordingly placing reliance upon several case laws and up on

the facts of the case he sustained 12.5% disallowance out of the bogus purchases.

4. Against above order revenue 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 or any other aspect of the working results 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).

5. The decision of N.K. Proteins Ltd. (250 ITR 22) relied by the revenue was a dismissal of SLP by the Hon'ble Supreme Court and has already been explained and distinguished by Hon'ble Bombay high court in the case of M. Hazi Adam & CO. (ITA No. 1004 of 2006 dated 11.2.2019).

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

7. Before parting I may add that if the assessee has filed cross appeals or cross objections 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 by placing the result on notice board on 1.1.2021.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 1/1/2021

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//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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