

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**
I.T.A. No.3150/M/2015 (Assessment Year: **2010-2011**)

ACIT-32(2), Mumbai.	बनाम/ Vs.	Shri Kalpesh P Doshi, A/6, Kavita Apartment, Natak Wala Lane, Borivali West, Mumbai-92.
स्थायी लेखा सं./PAN : AFBPD7461H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Pooja Swarup, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R. Prasad Rao

सुनवाई की तारीख / Date of Hearing : 09.03.2017

घोषणा की तारीख /Date of Pronouncement : 31.03.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 26.5.2015 is against the order of the CIT (A)-44, Mumbai dated 11.2.2015 for the assessment year 2010-2011.

2. In this appeal, Revenue raised six grounds in toto and they revolve around the solitary issue relates to the relief granted by the CIT (A) with regard to the addition of entire bogus purchases amounting to Rs. 45,62,456/-. During the assessment proceedings, AO noted that the assessee made bogus purchases from three parties viz (i) M/s. Laxmi Traders (Rs. 19,45,959/-); (ii) M/s. Royal Enterprises (Rs. 7,78,804/-) and (iii) M/s. Jainex Enterprises (Rs. 18,37,693/-). Subsequently, AO also initiated proceedings u/s 133(6) of the Act in respect of the said purchases. Accordingly AO made the addition. Aggrieved with the above addition, assessee was in appeal before the CIT (A).

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) followed the judgment of the Hon'ble jurisdictional High Court in the case of **Nickunj Eximp Enterprises Pvt Ltd vs. ACIT** vide Writ petition No. 2860 of 2012, dated 18th June, 2014. Further, relying on the ratio laid down by the Hon'ble Gujarat High Court in the case of **CIT vs. Simit**

P. Sheth, ITA No. 553 of 2012, dated 16.1.2013 and restricted the addition to 7.8% of the bogus purchases. CIT (A) considered the average GP of the assessee for the AYs 2007-08; 2008-09 and 2009-10. Thus, CIT (A) granted relief to the extent of 92.02%.

4. Before us, Ld DR for the assessee explained the above facts and submitted that the CIT (A) erred in non-considering the facts relating to the non-payment of VAT to the State Government, which was considered by the Hon'ble Gujarat High Court in the case of Simit P Sheth (supra). In reply, Ld AR for the assessee submitted that he will have no objection if the GP is estimated applying 12.50% on the so called bogus purchases.

5. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited precedents and the relevant material placed before the Tribunal. On hearing both the parties and considering the concession of the Ld AR for the assessee, we are of the opinion that the Assessing Officer should apply the flat rate of 12.50% of the said amount of Rs. 45,62,456/-. Accordingly, we order. Thus, the grounds raised by the Revenue are partly allowed.

6. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open court on 31st March, 2016.

Sd/-

Sd/-

(SANDEEP GOSAIN)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.03.2016

व.नि.स./ OKK, Sr. PS

(D. KARUNAKARA RAO)

ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**