

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4162/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

Pravin Thanmal Shah HUF 202, Shreenath Krupa, 5 <sup>th</sup> Carter Road, Borivali (E), Mumbai-400 066	<b>बनाम/</b> Vs.	Asst. CIT(A), Range-32(2), C-11, Room No. 308, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGHP 2293 A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Jitendra Singh
प्रत्यर्थी की ओर से/Respondent by	:	Ms. N. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	10.10.2017
घोषणा की तारीख / Date of Pronouncement	:	12.10.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This is an Appeal by the Assessee wherein reopening as well as 100% addition for the bogus purchases has been challenged.

2. The Assessing Officer in this case has made 100% addition on account of bogus purchase amounting to Rs.9,61,350/- for two parties, as under:

TIN	NAME OF THE PARTY	AMOUNT (IN RS.)
27650556128V	SHUBHLABH TRADING CO.	2,38,844
27890361220V	AAYUSHI ENTERPRISES	7,22,506
	TOTAL	9,61,350

3. Upon the assessee's appeal, the ld. CIT(A) granted part relief as under:

From the facts of the case, it is clear that one of the supplier namely M/s. Ayushi Enterprises has confirmed in writing that it had not made any transaction with the appellant during the F.Y. 2008-09 relevant to the impugned A.Y. 2009-10. In the written submission, nothing has been stated to counter the direct evidence collected by the AO by his own enquiry conducted u/s. 133(6) of the Act. Thus, as far as the transaction amounting to Rs 2,506/- from M/s. Ayushi Enterprises is concerned it is held that the appellant has not been able to substantiate the genuineness of the purchases. The addition of Rs 7,22,506/- is accordingly confirmed. As far as the transaction from M/s Shubhlabh Trading Co. is concerned, I am in agreement with the appellant that if the appellant has fulfilled his onus of making the payments by banking channels and has supplied the address of the seller<sup>1</sup>, then it cannot be presumed that the seller was bogus simply because the names of seller was mentioned in the list of hawala operators. Therefore, after considering the totality of facts I am of an opinion that it is the profit element on the total component in dispute which needs to be added to the income of the appellant. The appellant has shown gross profit rate of 8.7%. The amount of transaction with M/s Shubhlabh Enterprises is Rs 2,38,844/-. Thus 8.7% of Rs. 2,38,844/- which is Rs. 20,779/- is taken as profit of the appellant on purchases that are not fully and properly explained. Addition of Rs. 7,43,285/-(722506 + 20779) is accordingly confirmed out of an addition of Rs. 9,61,350/- and the balance is deleted. Grounds of appeal No. 3 is therefore partly allowed.

The grounds of appeal no. 4 relates to charring of interest u/s.234B & 234C and is therefore consequential in nature. The A.O. is directed to recomputed interest after giving appropriate appeal effect of this order.

4. Against the above order, the assessee in appeal before the ITAT.

5. I have heard both the counsel and perused the records. I 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 dated 18.6.2014). In this case, the Hon'ble High Court has upheld 100% 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, 12.5% disallowance out of the bogus purchases meets the end of justice. Accordingly, I hold that the disallowance should be restricted to 12.5% of the bogus purchases.

6. The Id. Counsel of the assessee fairly agreed to the above proposition and submitted that he shall not be pressing for the ground relating to challenge of the reopening.

7. In the result, this appeal filed by the assessee stands partly allowed.  
परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

*Order pronounced in the open court on 12.10.2017*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 12.10.2017

व.नि.स./Roshani, Sr. PS

**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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**