

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'E', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before Shri Shamim Yahya, AM & Shri Sandeep Gosain, JM

ITA No.7238/Mum/2016 : Asst.Years 2009-2010

Asst.Commissioner of Income-tax Circle 9(2)(2) Mumbai.	बनाम/ Vs.	M/s.Citybuild Arcade Private Limited 8, Sagar Tower, Fairdeal Road Off S.V.Road, Jogeshwari West Mumbai – 400 010. PAN : AACCC4021C.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : **Shri V.Justin**
प्रत्यर्थी की ओर से /Respondent by : **Shri Jayesh Dodia**

सुनवाई की तारीख / Date of Hearing : 17.08.2017	घोषणा की तारीख / Date of Pronouncement : 16.10.2017
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आदेश / ORDER

Per Shamim Yahya, AM

This is an appeal by the Revenue, wherein the Revenue is aggrieved by the order dated 30.09.2016 wherein the learned CIT(A) has sustained 12.5% disallowance for bogus purchases as against 100% disallowance done by the Assessing Officer for assessment year 2009-2010.

2. The Assessing Officer in this case has made 100% addition on account of bogus purchase amounting to Rs.92,93,949. Upon assessee's appeal, learned CIT(A) has noted that the consumption and sales have not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case, he sustained 12.5% disallowance out of the bogus purchases. The learned CIT(A) concluded as under:-

“As narrated earlier, the Ld. A.O. in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellants.”

3. Against the above order, Revenue is in appeal before the ITAT.
4. We have heard both the Counsel 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. This proposition is supported from Hon'ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises. 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 selling 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 meets the ends of justice. This is following the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth (2013) 356 ITR 451, followed by the ITAT Mumbai Benches in a number of cases. The learned Counsel of the assessee has submitted that on similar fact in subsequent year, i.e. A.Y. 2010-2011, the Assessing Officer has himself disallowed only

12.5% of the bogus purchase. The learned Counsel has also produced the assessment order for that year before us.

5. Accordingly, in the background of aforesaid discussion, we uphold the order of learned CIT(A) and direct that the disallowance be limited to 12.5% of the bogus purchase.

6. In the result, this appeal filed by the Revenue stands dismissed.

Order pronounced on this 16th day of October, 2017.

Sd/-
(Sandeep Gosain)
JUDICIAL MEMBER

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16.10.2017.
Devdas*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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