

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एफ" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

**BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM**

I.T.A. No.3165/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

Asstt.Commissioner of Income Tax-25(3), Room No.601, C-10, 6th floor, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.	<u>बनाम/</u> Vs.	M/s P B Construction Co., A-1, Monarch Castle CHS Ltd, Hanuman Road, Datta Wadi Vile Parle East, Mumbai-400057
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स्थायी लेखा सं./PAN : AACFP2842B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri T A Khan
प्रत्यर्थी की ओर से/ Assessee by	:	Shri A N Shah

सुनवाई की तारीख /Date of Hearing	:	6.9.2017
घोषणा की तारीख /Date of Pronouncement	:	13.11.2017

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This is an appeal filed by the revenue challenging the order dated 20.2.2017 passed by the Commissioner of Income Tax(A)-37, Mumbai for the assessment year 2010-11.

2. The only ground raised by the revenue is against the partly allowing the appeal of the assessee by the Id. CIT(A) directing the AO to make addition at the rate of 12.5% of the bogus purchases as against the 100% of the

disallowance of the said purchase by the AO to the tune of R.95,48,660/- by treating the said purchases as non-genuine. Thereafter the case of the assessee was selected and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. The AO while going through the list of the purchases observed that many of them were the same parties as blacklisted by the Sales Tax Department, Government of Maharashtra and even took action on all the hawala sales dealers by cancelling their TIN Numbers. The AO also issued notices to the parties u/s 133(6) of the Act to verify the genuineness of purchases but the same were returned unserved and thereafter vide letter dated 23.1.2013, the assessee was asked to produce the suppliers with relevant documentary evidences to prove the genuineness of the purchases. However, the assessee failed to do so and finally, the AO treated the said purchases as bogus purchases from four parties as bogus purchases aggregating to Rs.95,48,660/- and added the same to the total income of the assessee by framing the assessment order u/s 143(3) of the Act assessing the total income at Rs.2,54,88,760/- vide order dated 25.3.2013.

3. In the appellate proceedings, the Id.CIT(A) after considering the submissions and contentions of the assessee, partly allowed the appeal of assessee restricting the addition to the tune of 12.5% of the alleged purchases by following the decision rendered by the Hon'ble Gujarat High

Court in the case of Simit P Seth, 2013(356 ITR 451). Aggrieved by the order of the FAA, the revenue is in appeal before us.

4. We have carefully considered the rival submissions and perused the material placed before us including the impugned orders of authorities below. The undisputed facts are that the assessee is a beneficiary of bogus purchases to the tune of Rs.95,48,660/- which could not be proved by the assessee and even notices sent to the parties u/s 133(6) by the AO could not be served and therefore entire amount of bogus purchases added to the total income of the assessee. In the appellate proceedings, the Id.CIT(A) directed the AO to sustained the addition at the rate of 12.5% by following the decision in the case of Simit P Seth (supra) by observing that only profit earned by the assessee has to be taxed on reasonable basis. Considering the circumstances in totality, we are of the view that the order of the Id.CIT(A) does not suffer from any illegality or infirmity as the FAA has taken a very reasonable view in sustaining the purchases at the rate of 12.5%. The ITAT in a number of cases on identical facts and circumstances, have taken a consistent view that some percentage addition ranging from 5% to 12.50% or a reasonable percentage of the bogus purchase has to be made to tax the savings by the assessee by purchasing the material from gray market thereby saving VAT and other incidental taxes. The AO has not disputed sales corresponding to the bogus purchases . On these e facts on record, we find

that the Id.CIT(A) has taken a reasoned view and there is no necessity to interfere in the appellate order. Accordingly, we uphold the order of the Id.CIT(A) and dismiss the appeal of the revenue.

5. In the result, the appeal of the revenue stands dismissed.

The order pronounced on 13.11.2017.

Sd  
**(D.T.GARASIA)**  
**Judicial Member**

sd  
**(RAJESH KUMAR)**  
**Accountant Member**

**मुंबई Mumbai; दिनांक Dated :13 .11.2017**

Sr.PS:SRL:

**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,**

**True copy**

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