

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM**

I.T.A. No.1212/Mum/2018  
(Assessment Year: 2010-11)

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| M/s. Lords Shoes Bandra<br>534, Linking Road,<br>Bandra (West), Mumbai-400 050 | Vs. | ACIT, Circle 23(2),<br>122, 1 <sup>st</sup> Floor, Matru Mandir,<br>Tardeo, Grant Road,<br>Mumbai-400 007 |
| PAN/GIR No. AAAFL 1823 C   |     |   |
| <b>(Appellant)</b>   | :   | <b>(Respondent)</b>   |

|                      |   |                     |
|----------------------|---|---------------------|
| <b>Appellant by</b>  | : | Shri Amit Khatiwala |
| <b>Respondent by</b> | : | Shri S. K. Bepari   |

|                              |   |            |
|------------------------------|---|------------|
| <b>Date of Hearing</b>       | : | 15.10.2018 |
| <b>Date of Pronouncement</b> | : | 16.10.2018 |

**ORDER**

Per Shamim Yahya, A. M.:

This is an appeal by the assessee wherein the assessee is aggrieved that the learned Commissioner of Income Tax (Appeals)-33, Mumbai (‘ld.CIT(A) for short) dated 20.11.2017 has sustained 100% disallowance on account of bogus purchases amounting to Rs.2,67,221/-

2. The Assessing Officer (A.O. for short) in this case has made 100% addition on account of bogus purchase amounting to Rs.2,67,221/- which was confirmed by the ld. CIT(A).

3. Against the above order, the assessee is in appeal before the ITAT.

4. 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 the Hon'ble 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 100% allowance for the purchases said to be bogus when sales are not doubted. However the facts of the present case indicate that the 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 my 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 modify the order of the Id. CIT(A) and direct disallowance of 12.% of the bogus purchase of Rs.2,67,221/-. The Id. Counsel of the assessee fairly agreed to this proposition.

5. In the result, this appeal filed by the assessee stands partly allowed.

*Order pronounced in the open court on 16.10.2018*

Sd/-

(Shamim Yahya)  
Accountant Member

Mumbai; Dated :16.10.2018  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai