

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**Before Shri Shamim Yahya, Accountant Member and  
Shri Ravish Sood, Judicial Member and**

**ITA No.3608/Mum/2018  
Assessment Year-2009-10**

Shri Navin R. Gala, 3-120, MHB Colony, Kalachowky, Cotton Green, Mumbai-400003	<b>बनाम/ Vs.</b>	ITO-20(2)(4), 4 <sup>th</sup> Floor, Piramal Chamber, Lalbaug, Parel, Mumbai-400003
PAN No. <b>AAFPG9082K</b>		
(निर्धारिती /Assessee)		(राजस्व /Revenue)

निर्धारिती की ओर से / Assessee by	Shri Ruchi M. Rathod
राजस्व की ओर से / Revenue by	Shri Chaitnya Anjaria

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>22/04/2019</b>
□ देश की तारीख / <b>Date of Order:</b>	<b>23/04/2019</b>

**□ देश / O R D E R**

**Per Shamim Yahya (Accountant Member)**

This appeal by the assessee is directed against order of the Ld. CIT(A)-32, Mumbai, dated 11/01/2018 and pertains to Assessment Year 2009-10, wherein, the assessee is aggrieved that the Ld. CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases. The assessing officer in this case has made

12.5% addition on account of bogus purchase amounting to rupees 4,44, 775/- upon assessee's appeal. Ld. CIT A confirmed the same.

2. The brief facts in the case leading to Assessment Officer's order are as under:-

The assessee is engaged in the business of reselling plastic files, folders, sheets, display bags, cardholder and stationary goods under the name Monopoly Plastics. During the year under consideration, the assessee has declared gross profit @ 10.71 % on the turnover of Rs. 1,40,34,126/-

According to the information received from the Office of DGIV (Inv.) Mumbai the assessee has accepted entries in respect of bogus purchases from the following parties .

S.No.	Name of the party	Amount
1.	Entech Enterprises	Rs.15,17,841
2.	G. M. International	Rs. 13,65,947
3.	ShreeNakodaji Impex	Rs. 6,74,409

During the course of assessment proceedings, the assessee was appraised about the information received from the Sales tax department and the DGIT (Inv.), Mumbai. In the backdrop of this fact

assessee was asked to furnish supporting evidence in respect of the purchases made from the above entities. The assessee was specifically required to provide all the material evidences in support of the purchases made from the impugned parties to prove their genuineness. Further the assessee was also required to submit the explanation in writing as to why the purchases from these parties should not be held as unproved purchases and accordingly the variation should not be made in returned income.

In response to the above requirement the assessee provided the explanation in writing along with the other documentary evidence like copies of purchase bills, bank statement marking their payments to the parties, copies of the ledger accounts, copies of purchase bills and subsequent sale of goods purchased from the alleged bogus parties etc.

The explanation offered by the assessee and the documentary evidence produced has been carefully perused and considered. The assessee has vehemently claimed that allegations made by the Sales tax Department is totally untrue and incorrect. He has stated that failure on the part of the parties from whom assessee has made purchases to comply with VAT provisions and

make payment accordingly has made scapegoat to him. He has reiterated in his explanation that all the purchases are recorded in the books of accounts and subsequent item wise sales of goods purchased. He has also pinpointed that the payments have been invariably made by account payee cheques. He has also submitted that availability of TIN and VAT number coupled with bank account proves the identity of the supplier beyond doubt. In the backdrop of this fact, he emphasized that by no stretch of reasoning the purchases can be held as bogus. However, the assessee has submitted that to buy peace and to avoid prolonged strenuous litigations at the proceedings he agrees that the law laid down by the Hon'ble Gujarat High Court in the case of CIT-Vs. Simit P. Sheth ITANo.553 of 2012 order dt. 16-01-2013 may be applied to the facts of his case and addition on account of profits suppressed due to this transaction by applying GP percentage may be brought to tax.”

3. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. Up on careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference have been drawn due to the inability of

the assessee to produce the suppliers. We find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable 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 hundred percent allowance for the purchases said to be bogus when sales are not doubted. However in that case all the supplies were to government agency.

4. We also note that the honourable Gujarat High Court decision in the case of Pr CIT vs T R Kapadia in Tax Appeal no 691 of 2017, wherein, the honourable High Court has confirmed the deletion of disallowance on account of alleged bogus purchase as necessary documentary evidence for the purchase were on record. The special leave petition against this order has been dismissed by the honourable Supreme

Court in its decision dated 4/ 5/ 2018 S L P CIVIL Diary no 12670/2018.

5. In the present case the facts of the 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 the 12.5 % disallowance out of the bogus purchases meets the end of justice. However in this regard learned counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

6. Up on careful consideration, we find considerable cogency in the submission of the learned counsel of the assessee, as otherwise it will be double jeopardy to the assessee. Accordingly, we modify the order of learned CIT-A

and direct that the disallowance in this case be restricted to 12.5 % of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. Ld counsel of the assessee fairly accepted this proposition.

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

Order pronounced in the Open Court on 23/04/2019

**Sd/-**  
**(Ravish Sood)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/04/2019

*Shekhar, P.S.नि.स.*

**Sd/-**  
**(Shamim Yahya)**

लेखा सदस्य / ACCOUNTANT MEMBER

□ **देश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
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.

□ **देशानुसार/ BY ORDER,**

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

□ **यकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**