

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No.4227/Mum/2018
(Assessment Year: 2009-10)

Raghavendra P. Joshi (Prop. M/s. Jupiter Engineering Works) Gala No.5, Pramila Industrial Estate, Plot No. 268, Upvan, Thane 400606	बनाम/ v.	ITO 3(2) Room No. 04, 3 Wing, Ashar IT Park, 6 th Floor, Wagle Indl. Estate, Thane 400604
PAN: AAFFS6604P		
(Appellant)	..	(Respondent)
Assessee by:	None	
Revenue by:	Shri. Chaitanya Anjaria	

सुनवाई की तारीख /**Date of Hearing** : 10.06.2019
घोषणा की तारीख /**Date of Pronouncement** : 30.08.2019

आदेश / ORDER

PER SHAHMIM YAHYA, Accountant Member:

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT 'A' has erred in sustaining 100% disallowance on account of bogus purchases amounting to Rs. 7,27,940/-.

2. Brief facts of the case are that assessee is engaged in business of engineering jobs works. The information was received from the sales tax Department that assessee has engaged in bogus purchases. The assessment was accordingly reopened.

3. The assessing officer in this case has made 100% addition on account of bogus purchases amounting to Rs. 7,27,940/-. Upon assessee's appeal Ld. CIT(A) confirmed the same.

4. Against above order assessee is in appeal before the ITAT. I have heard Ld. DR and perused the records. None appeared on behalf of the assessee despite notice.

5. Up on careful consideration I find that assessee has provided the documentary evidence for the purchase. Adverse inferences have been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. No defect has been pointed in any other working of the assessee. 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 and consumption. This proposition is supported from honorable 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 honorable 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. 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 my considered opinion on the facts and circumstances of the case the 12.5 % disallowance out of the bogus purchases meets the end of justice. Accordingly, I direct that disallowance in this case be restricted to 12.5% of bogus purchases.

7. In the result assessee's appeal is partly allowed.

Order has been pronounced in the Court on 30.8.2019.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Mumbai, dated: 30.08.2019

Nishant Verma
Sr. Private Secretary
copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI