



ITA No.4690/Mum/2018  
Ramesh Sawantmal Bhansali  
Assessment Year-2010-11

आयकर अपीलीय अधिकरण "एक-सदस्य मामला" न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI

शमीम याहया, लेखा सदस्य  
**Shamim Yahya, Accountant Member**

आयकरअपील सं./ I.T.A. No.4690/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2010-11)

<b>Ramesh Sawantmal Bhansali</b> C/o, D.C. Bothra & Co. LLP (CA) (formerly known as D.C. Bothra & Co.) 297, Tardeo Road, Wille Mansion 1 <sup>st</sup> Floor, Opp. Bank of India Nana Chowk Mumbai-400 007.	<b>बनाम/ Vs.</b>	<b>Income Tax Officer,19(3)(1)</b> Mumbai.
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. <b>AEMPB 0518 A</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Rajkumar Singh
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Chaitanya Anjaria-DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	20/08/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	5/11/19

**आदेश / ORDER**

**Shamim Yahya (Accountant Member):-**

1. This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 13/04/2018 pertaining to assessment year 2010-11.



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2. Brief facts of the case are that assessee in this case is engaged in the business of trading in ferrous & non-ferrous metal.
3. The assessment in this case was re-opened upon receipt of information from sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However, the suppliers were not produced before the Assessing Officer. Sales in this case were not doubted.
4. The Income tax Officer in this case has made 25% addition on account of bogus purchase resulting in disallowance of Rs.76,12,297/-. Upon assessee's appeal Ld. CIT(A) restricted the same to 12.5%.
5. Against the above order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records.
6. Upon careful consideration I find that the assessee has provided the documentary evidence for the purchase. Adverse inference has 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. 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 Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp enterprises (in Writ Petition No.2860 order dated 18/06/2014). In this case the Hon'ble High Court has upheld hundred percent allowance for the purchases said to be bogus when sales



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are not doubted. However, in that case all the supplies were to government agency.

7. In the present case the facts of the case indicate that assessee has made purchases from 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, Ld. Counsel for the assessee referred to Hon'ble High Court of Bombay in a recent judgment in the case of Pr. CIT(A) vs. M. Haji Adam & Co. [ITA No. 1004 of 2016 dated 11/02/2019 in paragraph 8 there off] for the proposition that, the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

8. I respectfully following the aforesaid judgment of the Hon'ble High Court set aside the matter to the file of the Assessing Officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted opportunity of being heard.

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

*Order pronounced in the open court on 5/11/19.*

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

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 5/11/19



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*Sr.PS:-Jaisy Varghese*

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**