

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

**BEFORE SHRI SHAMIM YAHYA, AM**

आयकर अपील सं/ I.T.A. No.4669/Mum/2018

(निर्धारण वर्ष / Assessment Year:2011-12)

Prasana Raju Kothari M/s. Prakash Jhunjhunwala & CO. LLP Chartered Accountants 5, Jolly Bhavan No.2, Ground Floor 7, New Marine Lines, Churchgate. Mumbai-400020.	<b>बनाम/</b> Vs.	ITO Ward-18(3)(3) Earnest House, 6 <sup>th</sup> Floor, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHJPK3268N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Prakash Jhunjhunwala
Revenue by:	Shri Chaitanya Anjaria

सुनवाई की तारीख / Date of Hearing: 19.08.2019

घोषणा की तारीख /Date of Pronouncement: 06.11.2019

**आदेश / ORDER**

**PER SHAMIM YAHYA, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-29, Mumbai [hereinafter referred to as the “CIT(A)”] dated 16/04/2018 and pertains to A.Y.2011-12.

2. The assessee had challenged the order of the Ld. CIT(A) wherein the validity of reopening and the addition @ 12.5% of the bogus purchase has been upheld by Ld. CIT(A). The assessee has also raised the following ground before ITAT.

“1.0 On facts and circumstances of the case and in law, the assessment order u/s 143(3) r.w.s 147 dated 15.03.2016 is bad-in-law since had been passed before 4 weeks of disposal of objection order passed on 19.02.2016, thereby violated the binding precedent laid in the case of Asian Paints Vs. DCIT 296 ITR 90 (Bom-HC)”.

3. I find that the aforesaid ground is a legal issue and goes to the matter in this regard. I note that the Hon’ble Jurisdictional High Court in the aforesaid decision has held that if the AO does not accept the objection filed to notice u/s 148 of the Act, he shall not proceed further in the matter for the period of 4 weeks from the date of receipt of service of the said order on objection of the assessee. In the present case, it is noted that the AO has disposed off the objection on 19.02.2016 and passed the order on 15.03.2016. Admittedly, the above is not in accordance with the law laid down by the Hon’ble Jurisdictional High Court. Hence, I quash the assessment order since it is not in accordance with law laid down by Jurisdictional High Court. Since I have quashed the assessment as above, the adjudication of the other issue raised is only of academic interest. Hence, I am not engaging into the same.

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

Order pronounced in the open court on 06/11/2019.

**Sd/-**  
**(SHAMIM YAHYA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 06/11/2019  
Vijay/Sr. PS

**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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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