

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

ITA No. 4753/Mum/2018  
(Assessment Year: 2009-10)

Shri Rajesh B. Jain 104, 1 <sup>st</sup> Floor, Astral Mansion, Opp. Godrej, K. K. Marg, 7 <sup>th</sup> Rasta Jacob Circle Byculla, Mumbai-400 011	Vs.	Income Tax Officer-19(3)(1), Mumbai
PAN/GIR No. AAEPJ 8093 L		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Sashi Tulsian
<b>Respondent by</b>	:	Shri Chaitanya Anjaria

<b>Date of Hearing</b>	:	03.09.2019
<b>Date of Pronouncement</b>	:	02.12.2019

ORDER

Per Shamim Yahya, A. M.:

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 21.05.2018 pertaining to assessment year 2009-10..

2. Brief facts of the case are that the assessee in this case is engaged in the business of trading in ferrous and non-ferrous metals.

3. The Assessment in this case was reopened upon receipt of information from the 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 12.5% addition on account of bogus purchase resulting in disallowance of Rs.13,34,808/-.
5. Upon the assessee's appeal, the Id. CIT(A) confirmed the same.
6. Against the above order, the assessee is in appeal before the ITAT.
7. We have heard both the counsel and perused the records. Upon careful consideration we 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. We find that in this case the sales or other workings 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 dt 18.6.2014). In this case the Hon'ble 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.
8. 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, the Id. counsel contends that the assessee has already disclosed sufficient gross profit. The Id. counsel of the

assessee contends that this ITAT in identical case of Ashok Industries Corporation in ITA No. 647/Mum/2017 has restricted the disallowance to 2% of such speculation.

9. Upon careful consideration, following the precedence as above, we direct that disallowance be restricted to the same percentage.

10. In the result, the appeal stands partly allowed.

*Order pronounced in the open court on 02.12.2019*

Sd/-

(Amarjit Singh)  
Judicial Member

Mumbai; Dated : 02.12.2019

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

Sd/-

(Shamim Yahya)  
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai