

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6939/Mum/2018  
(निर्धारण वर्ष / Assessment Years : 2009-10)

The ITO – 19(2)(5) Room No. 210, Matru Mandir, Tardeo Road, Mumbai.	<b>बनाम/ Vs.</b>	Shri Puraram G. Modi M/s. Enercon Pipe & Fittings ind., 67/71/, 3 <sup>rd</sup> Kumbharwada, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ARLPM5879R		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by</b> :	Shri Kumar Padmapani Bora
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	None

सुनवाई की तारीख / <b>Date of Hearing</b>	19/12/2019
घोषणा की तारीख/ <b>Date of Pronouncement</b>	10 /01/2020

आदेश / O R D E R

**PER SHRI S RIFAUR RAHMAN- AM:**

This is an appeal preferred by the revenue wherein the revenue is aggrieved that the Ld. CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases for the A.Y 2009-10.

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2. Brief facts of the case are that the assessee is an individual engaged in trading of ferrous and non-ferrous metals under the proprietary concern by name M/s. Enercon Pipes & Fittings industries. Information was received from the sales tax Department that assessee has indulged in bogus purchases. The assessment was accordingly reopened.

3. The AO in this case has made 25% addition on account of bogus purchase resulting in following disallowance:-

A.Y 2009-10 : Rs. 50,01,852/-

4. Upon assessee's appeals Ld. CIT(A) restricted the same to 12.5%.

5. Against the above order the revenue is in appeal before us. We have heard both the counsel and perused the record.

6. We have heard both the counsels and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for

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the purchase. But, the assessee could not bring the suppliers before the tax authorities and were notices served by the A.O were returned un-served. On careful reading of the order of CIT(A) it is clear that A.O failed to link the purchases with corresponding sales. Since, the revenue accepted the sales, there has to be corresponding purchases to meet the sales. The tax authorities has early brought on record that assessee has recorded the purchases from non-existing suppliers, however sales were not doubted. Therefore A.O disallowed 25% of the bogus purchases, where as Ld. CIT(A) has restricted to 12.5% by relying on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sneth, 356 ITR 451 (supra), the Hon'ble Gujarat High Court estimated the profit embedded in the purchases and it is restricted to 12.5% and that meets the end of justice. Therefore, we are inclined to accept the findings of the Ld. CIT(A). Accordingly, the grounds raised by the revenue are dismissed.

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7. In the result, appeal of the revenue is dismissed.

**This Order pronounced in Open Court on 10/01/2020**

Sd/-  
(SAKTIJIT DEY)  
**JUDICIAL MEMBER**

Sd/-  
( S. RIFAUR RAHMAN )  
**ACCOUNTANT MEMBER**

Mumbai, Dated 10/01/2020

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai

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		Date	<u>Initial</u>	
1.	Draft dictated on	26.11.2019		PS
2.	Draft placed before author	27.11.2019		PS
3.	Draft proposed & placed before the second member	27.11.2019		PS
4.	Draft discussed/approved by Second Member.	27.11.2019		PS
5.	Approved Draft comes to the Sr.PS/PS	27.11.2019		PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			