



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

ITA no.6695/Mum./2018  
(Assessment Year : 2009-10)

Monarch Metal And Wires  
2, Amin House, Khetwadi  
8<sup>th</sup> Lane, Mumbai 400 004  
PAN – AAAFM2371A

..... Appellant

v/s

Income Tax Officer  
Ward-19(2)(3), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri R. Bhoopathi

Date of Hearing – 10.12.2019

Date of Order – 05.02.2020

**ORDER**

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 25% disallowance on account of bogus purchase.

2. Brief facts of the case are that the assessee is engaged in the business of reselling of wire and M.S. wire rods. Information was received from the Sales Tax Department that the assessee has taken accommodation entries in respect of bogus purchase. The assessment was accordingly re-opened. The Assessing Officer in this case has

made 25% addition on account of bogus purchase amounting to ₹ 6,42,379. Upon assessee's appeal, the learned CIT(A) confirmed the same.

3. Against the above order, the assessee is in appeal before the Tribunal. I have heard the learned Departmental Representative and perused the records.

4. Upon careful consideration, I find that the 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. It is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from the decision of the Hon'ble Jurisdictional High Court in Nikunj Eximp Enterprises Pvt. Ltd. v/s ACIT, Writ Petition no.2860, order dated 18<sup>th</sup> June 2014. In this case the Hon'ble High Court has upheld 100% 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 the assessee has made purchases 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, 12.5% disallowance out of the bogus purchases would meet the end of justice. I direct accordingly.

5. In the result, assessee's appeal stands partly allowed.

Order pronounced in the open Court on 05.02.2020

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 05.02.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai