

**IN THE INCOME TAX APPELLATE TRIBUNAL "F"
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 4427/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)

Vasant Construction Co. (I), 33/37, 1 st floor, Chandra Bhavan Building, Dhanji Street, Zaveri Bazar, Mumbai-400 003	बनाम/ Vs.	DCIT-15(2), Room No. 113, 1 st floor, Matru Mandir, Tardeo Road, Grant Road (w), Mumbai-400 007
स्थायीलेखासं./जीआइआरसं./PAN No. AAAFV0909M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ravindra Poojary, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Mrs. Kavita Kaushal, DR

सुनवाईकीतारीख/ Date of Hearing	:	05.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	26.02.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-28, Mumbai, dated 06.04.18 for AY 2009-10.

2. The brief facts of the case are that assessee is engaged in the business of construction. Information was received from the sales tax Department that assessee has indulged in bogus purchases. The Assessment was accordingly reopened. The assessing officer in this case has made 100% addition on account of bogus purchase amounting to Rs.66,48,430/-.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) confirmed the addition made by AO and dismissed the appeal of the assessee.

4. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming with AO's treatment of making addition of purchases from the following two parties as bogus and made addition of 100% of total purchase of Rs.9,62,377/-

<i>SI No.</i>	<i>Name of the party</i>	<i>TIN</i>	<i>Amount (Rs.)</i>
<i>1.</i>	<i>Chanchal Tube Corporation</i>	<i>27460355491V</i>	<i>87,048/-</i>
<i>2.</i>	<i>Dhruv Sales Corporation</i>	<i>27760622173V</i>	<i>8,75,329/-</i>

	<i>TOTAL</i>		9,62,377/-
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2. Without prejudice to ground no. 1 and on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the Gross Profit @ 9.50% on alleged bogus purchases

3. The appellant craves Your Honour' leave to add, alter or amend the grounds of appeal taken as above

5. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that this ground is squarely covered by the order of Coordinate Bench of Hon'ble ITAT in ITA 4428/Mum/2018 for AY 2011-12 in assessee's own case, wherein Hon'ble ITAT has passed its order in favour of assessee.

6. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

7. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the SMC Bench of ITAT in ITA No. 4428/Mum/2018 for AY 2011-12 in

assessee's own case on merits. For the sake of clarity, which is reproduced below:-

5. Upon on careful consideration, I find that 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 honourable 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 honourable 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.

6. In the present case the assessee is in construction business. 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. In such situation in my considered opinion on the facts and circumstances of

the case the 12.5 % disallowance out of the bogus purchases meets the end of justice. Hence, I direct that disallowance be restricted to 12.5% of the bogus purchases.

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

8. Therefore, respectfully following the above decision of SMC Bench in assessee's own case which is applicable *mutatis mutandis* in the present case, we are inclined to restrict the disallowance @ 12.5%. Therefore, we direct the AO to restrict the disallowance @ 12.5% of the bogus purchases. Accordingly, we **partly allow** the ground raised by the assessee.

9. In the net result, the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 26th Feb 2020.

Sd/-
(Pawan Singh)
न्यायिकसदस्य / Judicial Member
मुंबई Mumbai; दिनांक Dated :
Sr.PS. Dhananjay

Sd/-
(S. Rifaur Rahman)
लेखासदस्य / Accountant Member
26.02.2020

आदेशकीप्रतिलिपिअग्रेषित/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