

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

BEFORE SHRI SHAMIM YAHYA, AM

आयकर अपील सं/ I.T.A. Nos.5919 to 5921/Mum/2018

(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12)

Vilayti Tube India Bldg. No.26, Shop No.1, Kanungo Mension, 1 st Carpender Street, Mumbai- 400004.	बनाम/ Vs.	ITO 19(3)(5) Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFV4219K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Chaitanya Anjaria	

सुनवाई की तारीख / Date of Hearing: 20/02/2020
घोषणा की तारीख /Date of Pronouncement: 20/04/2020

आदेश / ORDER

PER SHAMIM YAHYA, AM:

These are appeals 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, pertaining to A.Y.2009-10, 2010-11 & 2011-12.

2. The brief facts of the case are that 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 received 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



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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 as under.:-

A.Y.2009-10 Rs.10,56,628/-

A.Y.2010-11 Rs.10,22,320/-

A.Y.2011-12 Rs.8,48,970/-

5. Upon assessee appeal Ld. CIT(A) confirmed the same.

6. Against above order assessee is in appeal before the ITAT. I have heard Ld. DR and perused the records. None-appeared on behalf of assessee despite notice.

7. Adverse inference 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, 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.

8. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through



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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, I find that it will be double prejudice if the gross profit already declared is not reduced from the standard 12.5% being disallowed on account of bogus purchases.

9. Accordingly, I direct that disallowance in this case be restricted to 12.5% of the bogus purchase as reduced by the gross profit already declared by the assessee.

In the result, these appeals filed by the assesses stand partly allowed.

Order pronounced in the open court on 20/04/2020

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :20/04/2020
Vijay Pal Singh/Sr. PS



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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**