

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
**ITA No.6104/M/2016 (AY 2009-2010)**

Shri Chhaganlal Solanki, 99/3, Dr. Mahimtura Marg, 3 <sup>rd</sup> Kumbharwada, Mumbai-004.	बनाम/ Vs.	ITO-19(1)(3), Mumbai.
स्थायी लेखा सं./PAN : ANLPS8277P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Gautam Salecha
प्रत्यर्थी की ओर से/ Respondent by :	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 11.04.2017

घोषणा की तारीख /Date of Pronouncement : 26.04.2017

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 13.10.2016 is against the order of the CIT (A)-30, Mumbai dated 11.07.2016.

2. In this appeal, assessee raised four grounds in toto. The core issue in the appeal relates to the correctness of the applicability of GP rate of 12.5% in respect of the 'bogus purchases' amounting to Rs. 1.56 Crs (rounded of). Other issues raised in grounds no.2 to 4 are not pressed. Accordingly, the said grounds are dismissed as not pressed.

3. Before us, Ld Counsel for the assessee submitted that the Assessing Officer made addition of Rs. 19,56,011/- being 12.5% of the non-genuine purchases of Rs. 1.56 Crs. On appeal, CIT (A) confirmed the same relying on the Bombay High Court Judgment in the case of Nikunj Eximp Enterprises P Ltd (372 ITR 619) (Bom) and Gujrat High Court Judgment in the case of CIT vs. Simit P Sheth [2013] (356 ITR 451) (Guj.). Aggrieved, assessee is in appeal before the Tribunal.

4. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before the Tribunal, I find, para

8.11 of the impugned order is relevant in this regard. Considering the significance of the said para, the relevant lines are extracted as under:-

*"8.11..... Request of the appellant is that the considering the VAT in the state of Gujarat 12.5% was adopted in that case, whereas the VAT here is only 4% therefore adopting the same logic the profit percentage is to be restricted to 6.5%. the appellant furnished the copy of the rate of VAT charges on goods sold in this city which says for 'stainless steel flats, strips and sheets' the rate is 4% and also enclosed the copies of the bills to the submissions. On perusal of the same, in all the bills the percentage of VAT is charged @ 4%. The margin in the trade is around 2.5%, which is also stated in the above decision. If the same logic is applied the profit percentage embedded on such percentage is to be restricted to 6.5%, as pleaded by the AR. Apart from that in the present case, the average GP already admitted is worked out to 4%, as per the workings given by the appellant's AR. Considering all the facts into consideration and the reasoning given by the Ar's pleading for adopting a lower percentage in their case, which is convincing and also based on the same logic adopted by the case law cited for estimating the profit element embedded on non-genuine purchases, the AO is directed to restrict the estimation @ 6.5% on the total non-genuine purchases of Rs. 1,56,48,089/- made from the twenty five parties....."*

5. From the above, I find, the CIT (A) discussed the issue at length and adjudicated the issue. Therefore, in my considered opinion, the decision of the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, relevant ground raised by the assessee is dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 26<sup>th</sup> April, 2017.

Sd/-

**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 26.04.2017  
व.नि.स./ OKK, Sr. PS

**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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**