

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
I.T.A. No.6257/M/2016 (Assessment Year: **2009-2010**)

Saifuddinbhai H. Deesawala, 501, C-1, Sarkar Residency, Dr. Mascarenhas Rd, Mazgoan, Mumbai – 400 010.	बनाम/ Vs.	ITO-18(3)(2), Mumbai.
स्थायी लेखा सं./PAN : AEZPD8632A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Vimal Purmiya / Mr. Amir Bohra
प्रत्यर्थी की ओर से/ Respondent by	:	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 18.04.2017  
घोषणा की तारीख /Date of Pronouncement : 26.04.2017

**आदेश / O R D E R**

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

This appeal filed by the assessee on 24.10.2016 is against the order of the CIT (A) – 29, Mumbai dated 16.08.2016 for the assessment year 2009-2010 in connection with the assessment order of the AO with the addition on account of "bogus purchases".

2. Narrating the facts, Ld AR submitted that the assessee reflected suspected purchases amounting to Rs. 98,18,000/-. AO restricted the addition to 20% of the said 'bogus purchases'. On appeal, CIT (A) restricted the addition to 12.5% of Rs. 98,18,000/-. Aggrieved with the said decision of the CIT (A), assessee is further appeal before the Tribunal.

3. During the proceedings before the Tribunal, at the outset, Ld Counsel for the assessee filed copy of the order of the CIT (A) for the subsequent AY 2010-2011 dated 10.1.2017 and submitted that the CIT (A) analysed the assessee specific GP and applicable VAT rates and restricted the addition to only 5% of the bogus purchases of Rs. 1,64,05,764/-. It was mentioned that the Department accepted the finding of the CIT (a) FOR ay 2010-2011. Ld AR prayed for applying the said order of the CIT (A) to the facts of the present case under consideration for AY 2009-2010.

4. On the other hand, Ld DR for the Revenue relied on the binding judgment of the Hon'ble jurisdictional High Court in the case of Nikunj Eximp Enterprises Pvt Ltd (216 taxman 171 (Bom)) as well as the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth [2013] (356 ITR 451) (Guj.) wherein 12.5% was approved.

5. On hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited precedents and the relevant material placed before the Tribunal, I find, the order of the CIT (A) in general and para 4 of his order in particular is fair and reasonable. In my view, the said decision of the CIT (A) is fair and reasonable and it does not call for any interference. Regarding the order of the CIT (A) AY 2010-2011, I find it irrelevant to comment on it as it is not the subject matter of appeal before the Tribunal. I cannot understand, VAT @ 4% on the assessee's product and with average GP rate of 3% of the assessee, how the AO restricted the addition to 5% of the bogus purchases in the AY 2010-2011. I cannot approve the Ld AR's demand for direction to AO for adopting the same 5% for this AY too. As such, the CIT (A) order for AY 2010-2011 was not available to the CIT (A) while passing the order for the AY under consideration. Therefore, the grounds of appeal raised in the appeal, including the Ground no.1 on validity of the re-assessment, are dismissed. No specific arguments are raised on the said Ground no.1 before me. Thus, grounds raised by the assessee are 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 26.4.2017  
व.नि.स./ OKK, Sr. PS

**आदेश की प्रतिलिपि अग्रहित/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**