

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

**BEFORE SHRI SHAMIM YAHYA, AM**

ITA No. 736/Mum/2019  
(Assessment Year: 2010-11)

|  |     |                            |
|--|-----|----------------------------|
| M/s. D. C. Engineers Private Limited<br>Plot No. 36, Survey No.66-1/2,<br>Naikpada, Waliv, Opp. Rapid Pack,<br>Vasai (E) – 401 208 | Vs. | ITO, Ward – 4(1),<br>Thane |
| PAN/GIR No. AABCD 1670 R   |     |                            |
| <b>(Appellant)</b>   | :   | <b>(Respondent)</b>        |

|                      |   |                      |
|----------------------|---|----------------------|
| <b>Appellant by</b>  | : | None                 |
| <b>Respondent by</b> | : | Shri Kailash Gaikwad |

|                              |   |            |
|------------------------------|---|------------|
| <b>Date of Hearing</b>       | : | 14.10.2020 |
| <b>Date of Pronouncement</b> | : | 01.01.2021 |

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee wherein the assessee is aggrieved that the learned Commissioner of Income Tax (Appeals)-3, Mumbai ('ld.CIT(A) for short) dated 01.11.2018 has erred in sustaining 25% disallowance on account of bogus purchase for the assessment year (A.Y.) 2010-11.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of engineering goods. Information was received from the Sales Tax Department that the assessee is engaged in making bogus purchases of Rs.62,25,917/- from two parties. The assessment was accordingly reopened.

3. The Assessing Officer ('A.O.' for short) in this case has made 25% addition on account of bogus purchase amounting to Rs.15,56,480/-.

4. Upon the assessee's appeal, the ld. CIT(A) confirmed the same.

5. Against the above order, the assessee is in appeal before the ITAT.

6. I have heard the Id. Departmental Representative (Id. DR for short) and perused the records. Upon careful consideration I find that the 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 or any other aspect of working of assessee 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 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 the government agency. In the present case, the facts of the case indicate that the 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, certain disallowance has to be done, out of the bogus purchases to meet the end of justice. In my considered opinion, disallowance of 12.5% of the bogus purchase as reduced by the gross profit already disclosed by the assessee would meet the end of justice. It does not need to be reiterated that if the gross profit already shown is more than 12.5%, no disallowance is required.

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

*Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by  
placing the details on the notice board on 01.01.2021*

Sd/-

(Shamim Yahya)  
Accountant Member

Mumbai; Dated : 01.01.2021  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai