

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 203/Mum/2018
(A.Y: 2009-10)**

**ITA No. 204/Mum/2018
(A.Y: 2010-11)**

Eminent Gas Technologies Pvt. Ltd., 29, Haria Industrial Estate Off LBS Marg, Majiwada, Thane (West)	बनाम/ Vs.	The ITO Ward 1, Kalyan Mohan Plaza, Khadakpada, Kalyan (West)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCE6652J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	None
प्रत्यर्थी की ओर से/ Respondent by :	Shri Vijay Kumar Menon, DR

सुनवाई की तारीख / Date of Hearing	02/02/2021
घोषणा की तारीख / Date of Pronouncement	04/02/2021

आदेश / ORDER

PER PAVAN KUMAR GADALE:

The assessee has filed these appeals against the separate orders of Commissioner of Income Tax (Appeals)- 2, Pune for the Assessment Year (AY) 2009-10 passed u/s 144

r.w.s. 147 and 250 of the Income Tax Act and for the AY 2010-11 passed u/s 144 and 250 of the Income Tax Act.

2. At the time of hearing, none appeared on behalf of the assessee nor adjournment petition was filed. On perusal of record, the assessee has filed MA No. 561&562/Mum/2019 in ex parte order ITANo.203&204/Mum/2018 dated 23.05.2019. Considering the Ld.AR submissions, the Hon'ble Tribunal has recalled the ITAT order on 29-01-2020 and fixed the case for hearing on 12.02.2020. Since the Bench did not function on said date and the case was adjourned to 05.03.2020. Subsequently due to Covid-19 Pandemic, Bench could not function on 05.04.2020 and 06.07.2020 and the case was posted on 29.10.2020 for hearing and none appeared on behalf of the assessee. Again on 5-01-2021, when the case was fixed for hearing none appeared on behalf of the Assessee. Even today none appeared, therefore considering the conduct of the assessee. We heard the Ld.DR and perused the material on record. Since, both the appeals have common and identical issues, they are clubbed and heard together and consolidated order is passed

3. For the sake of convenience. We shall take up ITA No. 203/Mum/2018 for AY 2009-10 and facts narrated therein. The assessee has only challenged the action of LdCIT(A) confirming addition of Rs6,04,182/- made on account of hawala Purchases.

4. The Brief facts of the case are that, the assessee is engaged in the business of manufacturing, supply and commissioning of Gas and Water Systems and Inspection and Maintenance Contracts. The assessee has filed return of income for AY 2009-10 on 26.09.2009 with the total income of Rs. 9,56,900/- and the return of income of income was processed u/s 143 (1) of the Act. Subsequently, the Assessing Officer has received information from Sales Tax Department of Maharashtra that the assessee has obtained bogus purchase bills from the certain entities. The Assessing Officer has reason to believe that income has escaped assessment and issued notice U/sec148 of the Act. Subsequently, notice u/s 143 (2) and 142 (1) of the Act are issued. Since there was no response to notices, assessing Officer made the Best judgment assessment u/s 144 of the Act. Considering the facts and circumstances that the assessee has not produced evidence of genuineness of purchase transactions, hence made an addition of bogus purchases of Rs6,04,182 and assessed the total income of Rs. 15,61,082/- and passed order u/s 144 r.w.s. 147 of the Act dated 31.03.2014.

5. Aggrieved by the order, the assessee has filed the appeal with CIT (Appeals). The Ld.CIT(A) considered the grounds of appeal, findings of the Assessing Officer and the written submissions observe that the assessee could not substantiate the genuineness of purchases and confirmed the action of

assessing officer and dismissed the assessee's appeal. Aggrieved by the order of CIT (A), the assessee has filed the appeal that the Tribunal.

6. We have heard the Ld.DR and perused the material on record. The sole disputed issue as envisaged in the grounds of appeal is in respect of addition of bogus purchases made by the AO and confirmed by the Ld.CIT (A). We find on perusal of the assessment order the AO has not disputed the sales, whereas the assessee has made bogus purchases from the entities only to make savings in respect of non-payment of tax. We considering the facts and circumstances and the series of Hon'ble Tribunal decisions in the similar cases and the precedence, where the income estimated @ 12.5% of the bogus purchase transaction were accepted. Accordingly, we restrict the addition to the extent of 12.5% of the bogus purchases and modify the Ld.CIT(A) order sustaining the addition to the extent of 12.5% and partly allow the grounds of appeal of the assessee. In the result assessee's appeal is partly allowed.

7. Similarly, in ITA No. 204/Mum/2018, whereas the facts and circumstances are identical to ITA No. 203/Mum/2018 for AY 2009-10, the decision rendered in the para 6 above Would apply mutatis mutandis also for this case. Accordingly, we modify the order of the CIT (A) sustaining addition to the extent @ 12.5% of the bogus purchases value and partly allow the grounds of appeal of the assessee.

In the result, assessee's appeal for AY 2009-10 and 2010-11 are partly allowed.

Order pronounced in the open court on 04.02.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.02.2021

AK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai