

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकर अपील सं./ I.T.A. No.7703/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Riddhi Siddhi Homes Shop 70, Agrawal Trade Centre Plot no. 62, GF, Sector 11, CBD Belapur, Navi Mumbai-400 614	बनाम/ Vs.	Joint CIT Room no. 307, 3 rd floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAIFR-3312-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Shri Bharat Andhale, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	01/06/2021
घोषणा की तारीख / Date of Pronouncement	:	01/06/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment year [AY in short] 2011-12 contest the order of Ld. Commissioner of Income Tax (Appeals)-26, Mumbai [in short CIT(A)] dated 04/10/2019 which has confirmed disallowance of Rs.5 Lacs on account of commission paid by the assessee.

2. The registry has noted a delay of 7 days in the appeal which we are inclined to condone since the delay is only minor one. Accordingly, the appeal is admitted and we proceed for adjudication of the same on merits.
3. Though none appeared for assessee, however, material on record was sufficient for disposal of the appeal. The Ld. DR pleaded for dismissal of the appeal.
4. The material facts are that the assessee being resident firm stated to be engaged as builder & developer was assessed for the year under consideration u/s 143(3) on 20/03/2014. It transpired that the assessee paid certain commission during the year and claimed deduction of the same. The subject matter of appeal is commission of Rs.2 Lacs as paid to M/s Meeta Enterprises and another commission of Rs.3 Lacs as paid to M/s Monty Trading Co. Though the assessee submitted that due TDS was deducted, however, it failed to produce these parties for confirmation. Accordingly, the commission payments were disallowed.
5. Before Ld. CIT(A), the assessee drew attention to the fact that it had supplied name and address of the payees, details of commission, their respective Income Tax Returns, evidence of payment through banking channels after deduction of tax at source, details of services rendered by these parties etc. The details furnished by the assessee were subjected to remand proceedings.
6. The assessee explained that the correct name of first entity was M/s Meeta Electricals and commission was paid to this entity for services rendered on sale of flat No.A-204. Similarly, the commission of Rs.3 Lacs was paid to M/s Monty Trading Co. for sale of flat No.B-704. The payment was stated to be made through banking channels and due tax

was deducted at source. The assessee furnished PAN and their respective Income Tax Returns. In the said background, it was submitted that initial onus was discharged and the expenditure could not be disallowed.

7. The Ld. CIT(A), considering the fact that the assessee could not produce any of the above party and in view of the fact that no evidence with regard to work for which commission was paid was not filed, chose to confirm the disallowance. Aggrieved, the assessee is in further appeal before us.

8. After going through assessee's documentary evidences as enumerated in preceding para-6, we find that the assessee had furnished complete details i.e. Name, Address & PAN of payees along with their Income Tax Returns. The payment to the two payees was through banking channels. It is undisputed fact that due tax was deducted at source while making these payments. The details of flats against which commission was paid, was also provided. Accordingly, the assessee, in our considered opinion, had discharged the initial onus of substantiating the expenditure. Merely because the assessee could not produce the payees during assessment proceedings, the same could not be the sole ground to confirm the disallowance. Therefore, we direct Ld. AO to delete the disallowance of Rs.5 Lacs.

9. The appeal stand allowed in terms of our above order.

Order pronounced on 01st June, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/06/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.