

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

**ITA No. 7551/MUM/2019
Assessment Year: 2010-11**

Asst. Commissioner of Income Tax 31 (2), Room No. 616, 6 th Floor, Kautilya Bhavan, BKC, Bandra (E), Mumbai - 400051	Vs.	Mahendra H. Shah, C/o Perfect Engg. Corpn., 101, Bhagyauday Soc., Srinagar Colony Road, M.G. Road, Goregaon (West), Mumbai - 400062 PAN: AAFPS2460P
(Appellant)		(Respondent)

Revenue by : Shri Shiddaramappa (DR)

Assessee by : None

Date of Hearing : 24/05/2021

Date of Pronouncement: 25/06/2021

ORDER

This is an appeal by the revenue against the order dated 30.09.2019 of learned Commissioner of Income Tax (Appeals)-42, Mumbai for the assessment year 2010-11.

2. When the appeal was called for hearing, no one appeared for the assessee. However, the assessee has filed letter dated 17.05.2021 seeking adjournment. Considering the nature of dispute and the fact that the appeal has been filed by the revenue. I am inclined to reject assessee's request for adjournment and proceed to dispose of the appeal ex parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. The dispute in the present appeal is confined to partial relief granted by learned Commissioner (Appeals) in the matter of disallowance made because of alleged non-genuine purchases.

4. Briefly the facts are, the assessee is an individual and engaged in the business of civil construction through his proprietary concern M/s Perfect Engineering Corporation.

5. For the assessment year under dispute, the assessee filed his return of income on 02.10.2010 declaring total income of Rs. 23,77,850/-. In course of assessment proceedings the Assessing Officer (AO) wanted to verify certain purchases shown by the assessee, since, as per information received from Sales Tax Department, Government of Maharashtra, sales worth Rs. 19,98,088/- shown by the assessee were suspected to be non genuine. In course of assessment proceedings, the AO called upon the assessee to furnish supporting evidences to prove the genuineness of the purchases and also to produce concerned parties for examination. As observed by the AO, the assessee could neither produce the concerned parties nor was able to furnish delivery challan and stock register to show movement and delivery goods. Based on above, the AO ultimately concluded that the purchases are non-genuine and accordingly disallowed an amount of Rs. 19,98,088/-. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases.

6. I have considered the submissions of learned Departmental Representative and perused the material on record. Though, it may be a fact that the assessee was unable to conclusively prove the source of the disputed purchases, however, it is equally true that the sales effected by the assessee have not been doubted. In such scenario, as per settled legal principle, only

the profit element embedded in the alleged non genuine purchases can be disallowed. That being the case, I find no infirmity in the decision of learned Commissioner (Appeals) in restricting the disallowance to 12.5% of the alleged non genuine purchases, as, it is in conformity with the settled legal principles. Grounds are dismissed.

7. In the result, appeal is dismissed.

Order pronounced in the open court on 25th June, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 25/06/2021

Alindra, PS

आदेश 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