

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND**

**SHRI JAGADISH, ACCOUNTANT MEMBER**

**I.T.A. No. 5663/Mum/2025**

**ASSESSMENT YEAR: 2011-12**

*(Physical Hearing)*

Deputy Commissioner of Income Tax Room No.429, Kautilya Bhavan, BKC, Mumbai-400051	Vs.	Priti Construction Tirupathi Construction Corporation Joint Venture C-113, Shyam Kamal, 27 Tejpal Road, Agarwal, Market, Vile Parle(E), Mumbai-400057 PAN: [AAMTS2752F]
(Appellant)		(Respondent)

Appellant by	Shri Virabhadra Mahajan, SR. DR
Respondent by	Shri Neelkanth Khandelwal, CA

Date of Hearing	06.01.2026
Date of Pronouncement	23.01.2026

**ORDER**

**Per: SHRI JAGADISH, A.M.:**

1. This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai dated 27.02.2025, passed u/s 250 of the Income Tax Act, 1961, for A.Y. 2011-12, arising from the order passed by DCIT, Central circle 1(4), Mumbai (A.O) under Section 143(3) r.w.s 254 of Income Tax Act.
2. There is a delay of 136 days in filing the present appeal. It is stated that the order of the Ld. CIT(A) was received in the office of PCIT(Central)-1, Mumbai and subsequently transferred to PCIT(Central)-3, Mumbai on email dated 16.05.2025 as the PAN lies with DCIT Central Circle-5(1). It is further stated that after scrutiny report and clarifications, approval for filing appeal before ITAT was granted, and thus

delay occurred which is neither deliberate nor intentional. After considering the reasons stated in the petition and keeping in view that the delay is due to administrative reasons, we are satisfied that there exists sufficient cause for condonation of delay. Accordingly, the delay of 136 days in filing the appeal is condoned.

3. The assessee is engaged in the business of civil contract work such as road constructions, repairs, storm water drains etc. The assessee has filed return of income for A.Y. 2011-12 on 30.09.2011 declaring total income of Rs. 1,32,69,756/-. The assessment was completed u/s 143(3) r.w.s. 254 vide order dated 30.11.2018, wherein the Assessing Officer made additions of:

- Rs. 1,56,20,670/- being 100% of alleged bogus purchases, and
- Rs. 6,24,827/- being 4% of such purchases, alleging undue VAT credit.

Thus, total addition of Rs. 1,62,45,497/- was made and assessed income was determined at Rs. 2,95,15,250/-.

4. On appeal, the Ld. CIT(A) granted relief to the assessee by restricting the addition on account of alleged bogus purchases to 7% and deleting the VAT addition of Rs. 6,24,827/-.

5. Aggrieved, the Revenue is in appeal before the Tribunal raising the following grounds:

1. *CIT(A) erred in restricting addition to Rs. 10,93,446/- being 7% of alleged bogus purchases as against 100% disallowance made by AO.*
2. *CIT(A) erred in restricting addition @7% ignoring decision of Hon'ble Supreme Court in N.K. Proteins Ltd..*
3. *CIT(A) erred in deleting addition of Rs. 6,24,827/- on account of undue VAT credit without giving reasons.*
4. *CIT(A) erred in granting relief even though assessee allegedly failed to prove utilization/consumption of material for execution of contracts.*

6. The Ld. DR supported the assessment order and submitted that the AO has rightly made 100% addition of purchases as the purchases were proved to be bogus/unproved. He submitted that during survey action u/s 133A conducted on 26.11.2012, statement of Shri Nitin R. Shah was recorded u/s 131 wherein it was admitted that the assessee has made bogus purchases. He further submitted that notices u/s 133(6) were issued to parties but were returned unserved and the Inspector reported that none of the parties existed at the given addresses. Therefore, the assessee failed to prove genuineness of purchases and hence the purchases were rightly treated as non-genuine. The Ld. DR argued that Hon'ble Supreme Court decision in N.K. Proteins Ltd. supports the case of the department, and in such circumstances, restricting the addition to 7% is not justified. The Ld DR further argued that assessee has not been able to prove utilisation / consumption of material as directed by Hon'ble ITAT in first round of appeal. He prayed that the order of CIT(A) be reversed and that of AO be restored.

7. The Ld. AR, on the other hand, supported the order of the Ld. CIT(A) and submitted that the assessee is a civil contractor executing work orders for Government bodies such as MCGM, MMRDA, etc., and contract receipts are not disputed. He submitted that even if suppliers are not traceable and purchases are doubted, entire purchases cannot be disallowed once contract receipts are accepted, and at best, only profit element can be estimated. He also submitted that the Hon'ble ITAT in earlier proceedings had directed the assessee to prove utilisation/consumption of material and the matter was remanded to AO for de-novo adjudication. He further submitted that the assessee had filed explanations and supporting documents, and therefore the Ld. CIT(A) has taken a fair view by sustaining addition only @7%, which reasonably covers possible leakage of revenue. The Ld. AR relied on the case of Shah & Parikh ITA No 734/Mum/2016 dated 26.09.2018 of co-ordinate bench on same set of facts.

8. We have heard the rival submissions and perused the material on record. We find from the assessment order that the AO treated purchases to the extent of Rs. 1,56,20,670/- as non-genuine on the basis of statement recorded during survey and on the basis that notices issued u/s 133(6) were returned unserved and suppliers

were not found available at given addresses. We also note that the assessment has been framed u/s 143(3) r.w.s. 254, pursuant to directions of Tribunal in earlier round, where the issue was restored for de-novo adjudication and assessee was directed to prove utilisation/consumption of material for executing relevant work orders issued by MCGM/MMRDA etc. The Ld. CIT(A), considering the nature of business of the assessee and the fact that contract receipts are accepted, restricted the addition to 7% of alleged purchases and sustained addition of Rs. 10,93,446/-. In our view, in case of civil contractors, where receipts are not disturbed, entire purchases ordinarily cannot be added and it is the profit element embedded in such purchases which is liable to be brought to tax. Therefore, restricting the addition to a reasonable percentage is justified. The reliance placed by the Revenue on the decision of Hon'ble Supreme Court in N.K. Proteins Ltd. is fact-specific and cannot be applied mechanically in all cases. Considering overall facts and circumstances, we do not find any infirmity in the order passed by the Ld. CIT(A).

Accordingly, Grounds No. 1 and 2 raised by the Revenue are dismissed.

9. Ground No.3: The Revenue has challenged the deletion of addition of Rs. 6,24,827/-, which was computed @4% of the alleged bogus purchases, treating the same as undue VAT credit. We observe that the VAT addition has been made by the AO on an ad hoc basis @4% of purchases. Such addition is consequential to the main disallowance of purchases. Once the purchases are not treated as entirely bogus and only profit element is estimated, a separate addition towards VAT credit on the same base results in double addition. Therefore, we find no justification to interfere with the decision of the Ld. CIT(A) in granting relief on this issue.

Accordingly, Ground No. 3 raised by the Revenue is dismissed.

10. Ground No. 4 relates to the Revenue's contention that the assessee failed to discharge the responsibility cast upon it by ITAT in earlier proceedings regarding proving utilization/consumption of material. We find that the Ld. CIT(A) has already restricted the addition to a reasonable estimate of 7% of purchases, thereby covering any possible leakage of revenue on this account and the co-ordinate bench

has already taken a view of estimating on same facts . In view of our findings in Grounds No. 1 and 2, this ground does not survive independently.

Accordingly, Ground No. 4 is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced in the open court on 23<sup>rd</sup> day of January, 2026 at Mumbai.*

**Sd/-**

**Sd/-**

**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**(JAGADISH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23/01/2026.

*Ashwani Rao*  
*Sr. Private Secretary*

**Copy of the order forwarded to:**

1. Appellant
2. Respondent
3. The CIT
4. The CIT (Appeals)
5. The DR, I.T.A.T.

By order

(Assistant Registrar)  
ITAT, Mumbai