

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA Nos.:- 4297,4298/Del/2018

Assessment Years: 2011-12, 2010-11

Addagio Overseas, 1/18-B, Asaf Ali Road, New Delhi-110 026	Vs.	ACIT Central Circle-26 New Delhi Pan AAFFA4164Q
(Appellant)		(Respondent)

Assessee by:	Shri S.K. Chaturvedi, CA
Department by :	Shri S.L. Anuragi Sr. DR
Date of Hearing	30/01/2019
Date of pronouncement	31/01/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 1.5.2018 passed by Ld. CIT(A) 29 New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2011-12. The assessee is mainly aggrieved by levy of penalty of Rs. 3,09,000/- made on account of disallowance of commission /brokerage on purchases.

2. The facts in brief are that assessee was engaged in the business of manufacturing of garments of various brands. During the year assessee has claimed brokerage/commission on purchase of Rs. 10,47,592/-. AO disallowed the entire brokerage. Before the AO assessee had submitted confirmation letters of the parties, copy of

their Income Tax Return and their bank account. However, the AO has made the disallowance on the ground that the assessee could not produce the parties. In the appellate proceedings, addition of Rs. 10 lacs was confirmed up till the stage of the Tribunal. Thus, on the basis of such an addition Ld. AO has levied penalty of Rs. 3,09,000/- on account of furnishing of inaccurate particulars of income. Ld. CIT (A) has confirmed the said penalty.

3. After hearing both the parties and on perusal of the relevant finding given in the impugned order, it is seen that disallowance of Rs. 10 lacs was made in the quantum proceedings on the ground that brokerage /commission could not be proved to be genuine, although the copy of confirmation, income tax return etc. filed by the parties directly before the AO in response to summon made u/s 131. The sole reason for disallowance in the quantum proceedings was that, none of these persons could be produced for a deposition when the assessee was asked to produce these persons. Hence solely on this reasoning it was held that assessee could not prove the claim to be genuine. However, such a finding given in the quantum proceedings could not be held to be conclusive to hold that assessee is also guilty for furnishing of inaccurate particular of income so as to warrant penalty u/s 271(1)(c). The assessee has been paying brokerage/ commission in the earlier year also and in order to prove the claim, the parties have directly sent confirmations, their income tax returns, bank statement etc. to show that these commissions have been paid to them on account of purchases. Thus, the primary onus cast upon the assessee, stood discharged and even if these persons could not be produced or did not appear inspite of summon u/s 131, that does not mean the material and evidence filed by the assessee was incorrect or has been found to be false. Assessee was able to substantiate its claim though such a claim did not found favour only for the reason that

these parties did not appear. There is no other material or evidence on record to show that such payment of brokerage / commission is bogus or is coloured transaction. Accordingly, under these facts and circumstances no penalty can be levied for furnishing of inaccurate particulars of income and same is directed to be deleted.

4. In the result appeals of the assessee is allowed.

Order pronounced in the open court on 31st January, 2019.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 31/01/2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi