



ITA No.2271/Mum/2018
Mr. Ashik Ali Unwala
Assessment Year-2009-10

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.2271/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

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| Mr. Ashik Ali Unwala G/201, Veena Beena Apts. A.D. Marg, Sewree. Mumbai-400 015. | बनाम/ Vs. | ITO -20(1)(2) 1 st Floor, Piramal Chambers Lalbaug, Mumbai. |
| स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAJPU-6927-H | | |
| (पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| पीलार्थी की ओर से/ Appellant by | : | Shri C.V. Dharkar-Ld.AR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri S. Michael Jerald-Ld.DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 15/10/2019 |
| घोषणा की तारीख / Date of Pronouncement | : | 15/10/2019 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-32, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-32/IT-408/ITO-*



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20(1)(2)/2015-16 dated 24/01/2018 qua confirmation of penalty of Rs.2.32 Lacs u/s 271(1)(c) as levied by learned AO vide penalty order dated 27/08/2015.

2. Facts leading to imposition of penalty are that the assessee has been saddled with estimated additions of 12.5% of alleged bogus purchases of Rs.54.21 Lacs in an assessment framed u/s 143(3) r.w.s. 147 on 27/02/2015. Pursuant to receipt of certain information from Sales Tax Department, Maharashtra, it was alleged that the assessee obtained bogus purchase bills aggregating to Rs.54.21 Lacs from 11 entities. Although the assessee, in defense, produced details of purchase, corresponding sales made against those purchases, bank statements evidencing payment to the stated suppliers, however, it failed to produce any of the supplier for confirmation of accounts. Notices issued u/s 133(6) elicited no satisfactory response. The factual matrix led Ld. AO to believe that full verification of quantity purchased from the stated parties remained unverifiable and therefore, he estimated additions against the same @12.5% to plug the leakage of revenue.

3. Consequently, penalty proceedings were initiated against the assessee u/s 271(1)(c) for filing inaccurate particulars of income. Although the assessee opposed the levy of penalty, however, not satisfied, Ld. AO levied penalty of Rs.2.32 Lacs vide order dated 27/08/2015. Although the assessee agitated the levy of penalty before Ld. CIT(A), however, the assessee's submissions could not find favor with Ld. CIT(A) who confirmed



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the penalty since the assessee failed to prove the genuineness and bona-fide of the transactions.

4. Aggrieved, the assessee is in further appeal before us. We have considered the rival submissions, perused relevant material on record and deliberated on judicial pronouncements as cited before us.

5. Upon careful consideration of quantum assessment order and penalty order, it is undisputed fact that the assessee has been saddled only with estimated additions of 12.5% in the backdrop of the fact that the assessee could not produce the suppliers for confirmation of transactions. Nevertheless, the assessee was in possession of primary purchases documents and had furnished purchase details and corresponding sales made against those purchases. The payment to the suppliers was through banking channels. Therefore, it is not the case where the claim was completely found to be bogus or non-genuine which is also evident from the fact that Ld.AO, himself, chose to make additions @12.5% instead of making full disallowance. In other words, a substantial claim has been accepted by the revenue. Therefore, the additions on which penalty has been imposed, are purely on estimation basis and the same, in our considered opinion, would not show any mala-fide intention on the part of the assessee to conceal its income. Therefore, by deleting the impugned penalty, we allow the appeal.



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6. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 15th October, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 15/10/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/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/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.