

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 5893/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Global Fashion Clothing Co. Shop No.7, KRDN Ind. Estate, Off Aarey Road, Goregaon (E), Mumbai- 400063.	बनाम/ Vs.	ITO, Ward 31(1)(5) Pratyaksha Kar Bhavan, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFG5928B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri V. Vinod Kumar (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 02/12/2019

घोषणा की तारीख /Date of Pronouncement: 09/12/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 28.06.2018 passed by the Commissioner of Income Tax (Appeals)-42, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12 in which the penalty levied by the AO has been order to be confirmed.

2. The assessee has raised the following grounds: -

- “1. On the facts and in the circumstances of the case, the CIT(A) hereinafter referred to as the CIT(A) has erred in confirming the validity of penalty proceedings without appreciating the relevant



facts of the case. The appellant respectfully submits that the initiation of penalty proceedings in its case itself and consequently the levy of penalty is also invalid and unjustified.

2. *Without any prejudice to Ground 1 above, on the facts and in the circumstances of the case, the CIT(A) has erred in confirming the penalty in relation to the disallowance of interest of Rs,6,74,411/- made u/s 36(1)(iii) of the Act. The appellant respectfully submits that no penalty is leviable in relation to the same considering the full and true disclosure made by the appellant in the return of income and the financial accounts of the appellant.*
3. *The appellant prays that the penalty u/s 271(1)(c) as confirmed by the CIT(A) shall please be deleted."*

3. The brief facts of the case are that the assessee filed its return of income on 28.09.2011 declaring total income to the tune of Rs.10,63,152/-. The assessment was completed on 15.02.2016 assessing the total income to the tune of Rs.17,68,520/- u/s 143(3) r.w.s.147 of the Act. At the time of assessment, the assessee admitted the purchase bill from hawala operators of Rs.2,310/- which was disallowed and added to the income of the assessee. Interest to the tune of Rs.6,74,411/- was also disallowed u/s 36(1)(iii) of the Act. The assessee also deposited the Employee's Share of Contribution Fund of Rs.21,486/- after due date of return, therefore, the said amount was also disallowed and added to the income of the assessee. Thereafter, the penalty proceeding u/s 271(1)(c) of the Act was initiated and after the reply of the assessee, the penalty to the tune of Rs.2,15,750/- was levied. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the appeal of the



assessee but the assessee was not satisfied on the grounds mentioned above, therefore, filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully. In the instant case, the penalty has been levied on account of bogus purchase of Rs.2,310/- and on account of disallowance of interest expenses in sum of Rs.6,74,411/- u/s 36(1)(iii) of the Act and also on account of late payment of Employees Share Contribution of Provident Fund of Rs.21,486/-. Firstly the penalty was levied on account of bogus purchase transactions on which the estimated income was assessed to the tune of Rs.2,310/-. No penalty is leviable on account of the income assessed on bogus purchase in view of the decision of **Hon'ble Gujarat High Court in the case titled as National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)**. The remaining two items are disallowance of interest as well as disallowance of employees contribution funds. The assessee has reflected all the transactions in its return of income which was disallowed by AO. After examination of the claim of the assessee, the AO disallowed the claim of the assessee which nowhere leads to levy the penalty in view of the provisions us/ 271(1)(c) of the Act and in this regard, we also find support of the law settled in **CIT Vs. Reliance Petroproduct (2010) 322 ITR 158 (SC)**. So it is not a case of concealment of income or furnishing of inaccurate particulars of



income. Therefore, we are of the view that the penalty is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on these issues and delete the penalty.

5. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 09/12/2019.

Sd/-

Sd/-

(RAJESH KUMAR)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 09/12/2019

Vijay Pal Singh/Sr. PS

आदेश की 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**