

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

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5040/MUM/2019
Assessment Year: 2008-09**

The Assistant Commissioner of Income Tax – 25(2), Room No. 220, 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 51	Vs.	Shri Anand Babulal Mehta, 301, Aalap Nehru Road, Vile Parle (E), Mumbai - 400057 PAN : AARPM2652F
(Appellant)		(Respondent)

**ITA No. 4997/MUM/2019
Assessment Year: 2009-10**

The ITO – Wd-25(2)(4), Room No. 218, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	Shri Jai Pravin Gandhi, 19, Nandanvan, Dr. Ansari Road, Vile Parle (W), Mumbai - 400056 PAN : AEQPG3807H
(Appellant)		(Respondent)

**ITA No. 4962/MUM/2019
Assessment Year: 2009-10**

The ITO – Wd-25(2)(1), Room No. 216, 2 nd Floor, Kautilya Bhavan, G- Block, BKC, Bandra (E), Mumbai - 400051	Vs.	Shri Chandrakant T. Goradia, 502, Ruby Terrace, Dadabhai X Road No. 3, Vile Parle – W, Mumbai - 400056 PAN : AEIPG6213P
(Appellant)		(Respondent)

**ITA No. 4921/MUM/2019
Assessment Year: 2009-10**

The Income Tax Officer-25(3)(4), Room No. 236, 2 nd Floor, Kautilya Bhavan, Near Videsh Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	M/s SVPNH Steel Services, B-26, Hastiraj, Bapubhai Vashi Road, Vile Parle (W), Mumbai - 400056 PAN : AABFS2247J
(Appellant)		(Respondent)

ITA No. 5041/MUM/2019
Assessment Year: 2009-10

The ACIT – 25(2), Room No. 220, 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	M/s Dynamic Engineers, 1, Rajhans, Nariman Road, Vile Parle (E), Mumbai - 400057 PAN : AAFFD5202N
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ITA No. 5034/MUM/2019
Assessment Year: 2010-11

The Income Tax Officer – 25(1)(2), Room No. 204, 2 nd Floor Kautilya Bhavan, G- Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	Sharda Vinod Bhatia, 201, Model Town, Mahesh Ashish Units CHS Ltd., Off J.P. Road, 4 Bungalows, Andheri (W), Mumbai - 400053 PAN : AGHPB6897P
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ITA No. 5038/MUM/2019
Assessment Year: 2010-11

ITA No. 5039/MUM/2019
Assessment Year: 2011-12

The ACIT-25(2), Room No. 220, 2 nd Floor Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	M/s Amar Construction Corporation, 6, Chunawala Building, Dixit Road, Vile Parle (E), Mumbai - 400057 PAN : AAEFA1093P
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ITA No. 4996/MUM/2019
Assessment Year: 2011-12

The ACIT-25(2), Room No. 220, 2 nd Floor Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	Grafica Flextronica , Shop No. 3, Saurabh CHS, Shahji Raje Marg, Vile Parle (E), Mumbai - 400057 PAN : AAAFG4064A
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Revenue by : Shri Pankaj Kumar (DR)

Assessee by : None

Date of Hearing: 05/12/2019
Date of Pronouncement: 13/12/2019

आदेश / O R D E R

PER RAM LAL NEGI

The captioned appeals have been filed by the revenue pertaining to the assessment years 2008-09, 2009-10, 2010-11 and 2011-12 against the orders passed by the respective CIT(A)s, whereby the CIT (A)s have allowed the appeals filed by the assesseees against the penalty orders passed by the AOs u/s 271 (1) (c) of the Act and deleted the penalties levied by the AO. Since, the issues involved in all the appeals are common, these appeals were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of brevity and convenience.

2. These appeals were fixed for hearing on 02.12.2019. On the said date, when the case was called out for hearing, none appeared on behalf of the assessee. Hence, these cases were adjourned to 03.12.2019. On 03.12.2019 again none appeared on behalf of the assessee. The Ld. Departmental Representative (DR) submitted that though the tax effect in these cases are below the limit prescribed by the CBDT for filing appeal before the ITAT, however, since the additions in the quantum appeals have been made on the basis of information received from the Sales Tax Department, Maharashtra, the penalty levied in these cases also fall within the exceptions carved out in the circular. Hence, the Ld. DR submitted that the Department wants to argue these cases on merits. Accordingly, these cases were adjourned to 05.12.2019. On the said date, none appeared on behalf of the assesseees. Hence, keeping in view the small issue involved in these cases, we decided to proceed with and disposed of these appeals on the basis of material on record after hearing the Ld. DR.

3. Before us, the Ld. DR submitted that in these cases the assessee obtained bogus purchase bills from hawala dealers, who used to issue bogus bills/entries in order to inflate the purchases on commission basis. The assessees in these cases have obtained bogus bills from the hawala parties aforesaid. After hearing the assessees, in some of the cases, AO made addition of the total amount of bogus purchases and in remaining cases made addition of 12.5%. In the first appeal, the Ld. CIT(A) restricted the addition to 12.5% and in further appeal, the ITAT either confirmed the addition to 12.5% or restricted up to 2%. In the light of the aforesaid facts, the Ld. DR submitted that since the AO has initiated penalties on the basis of the additions made by the AO, confirmed/restricted by the Ld. CIT(A)/ ITAT, the Ld. CIT (A) ought to have confirmed the penalties levied by the AO.

4. We have heard the Ld. DR and perused the material on record including the cases relied upon by the authorities below. The details of additions made by the AO, confirmed/restricted by the appellate authorities are as under:-

Sr. No.	ITA No.	% of Addition made by the AO	Addition confirmed by the CIT (A)	Addition confirmed by the ITAT
1.	5040/Mum/2019	100%	12.5%	–
2.	4997/Mum/2019	12%	12%	8%
3.	4962/Mum/2019	12.5%	12.5%	10%
4.	4921/Mum/2019	12.5%	12%	2%
5.	5041/Mum/2019	100%	12.5%	12.5%
6.	5034/Mum/2019	12.5%	–	–
7.	5038/Mum/2019	100%	12.5%	12.5%
8.	5039/Mum/2019	100%	12.5%	12.5%
9.	4996/Mum/2019	100%	12.5%	12.5%

5. Under section 271(1)(c) of the Act, AO has power to impose penalty on an assessee for concealing its particulars of income or furnishing inaccurate particulars of such income. As per the settled law, proceeding for imposition of

penalty and assessment are two separate and distinct proceedings and the findings recorded by the authorities below or the appellate authorities including the ITAT in quantum appeal cannot be said to be the conclusive factor in the penalty proceeding. In other words, addition of certain amount in quantum appeal does not *ipso facto* makes an assessee liable for penalty u/s 271(1)(c) of the Act. Admittedly, in all these cases, the AO has made additions on estimation basis for the reason that the assessee has failed to prove the genuineness of transaction by adducing cogent and convincing evidence. Since, the addition is on *ad-hoc* basis, it cannot be concluded that the assessee have concealed their particulars of income or furnished inaccurate particulars of such income within the meaning of section 271 (1) (c) of the Act. The coordinate Bench of the Tribunal in the case of *Shri Ajay Loknath Lohia ITA No. 2998/Mum/2017* for the AY 2009-10, has held that disallowance of purchases on *ad-hoc* basis does not tantamount to willful furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the Act. The findings of the coordinate Bench reads as under:-

“Having heard both sides, we find merit in the arguments of the assessee for the reason that although the AO has estimated 25% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The AO never disbelieved information filed by the assessee, but the proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on ad hoc basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, we are of the considered view that mere ITA 2998/Mum/2017 disallowance of purchases on ad hoc basis does not tantamount to willful furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the Income Tax Act, 1961. Hence, we are of the considered view that the AO was erred in levying penalty

u/s 271 (1) (c) of the Act. Accordingly we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act.”

6. Similarly, in the case of *Sushil Chaturbhuj Raheja ITA No. 1375, 1376 and 1377/Mum/2017 for the AY 2011-12, 2012-13 and 2010-11* respectively, the coordinate Bench has deleted the penalty levied u/s 271 (1) (c) of the Act, on the basis of addition made on *ad-hoc* basis. The operative part of the case reads as under:-

3. We have heard ld AR of the assessee and DR for revenue and perused the material available on record. The learned AR of the assessee argued that the assessee has neither concealed the income nor furnished inaccurate particulars thereof. The assessee furnished complete detail of his purchases to substantiate his expenses incurred on account of purchases during the relevant assessment year. The assessing officer made the addition only on the estimation basis on account of the alleged bogus purchases. It was argued that no penalty is leviable on the addition made on the basis of estimation/ad hoc basis. In support of the submission the ld AR of the assessee relied upon the following decision;

- (i) CIT Versus Ravail Singh & Company 254 ITR 191(P&H),*
- (ii) Harigopal Vs CIT 258 ITR 85 (P&H HC),*
- (iii) ITO Vs Bombaywala Readymade Store[2015]230Taxman 313(Guj H C),*
- (iv) Naresh Chand Aggarwal Versus CIT 357 ITR 515 (All HC), (v) DCIT Versus Manohar Manak ITA 5586/Mumbai/2015,*
- (vi) Yashraj Films Pvt Ltd Versus ACIT ITA 7519/Mumbai/ 2013,*
- (vii) Sarvesh Mercantile Private Ltd Vs ACIT ITA 6040/M/ 2013 and*
- (viii) DCIT versus Risabh Impex ITA 93/Mumbai 2011.*

4. On the other hand the learned and AR for the revenue supported the order of authorities below. It was argued that the investigation wing of the income tax Department made the full-fledged enquiry about the racket of hawala dealers who were

involved in providing accommodation entries with of sale and purchase of the material. The assessee was one of such beneficiary who availed accommodation entry for inflating the profit.

5. We have considered the rival submission of the parties and have gone through the orders of authorities below. The perusal of assessment order reveals that the assessing officer, while passing the assessment order under section 143(3) rws 147, made the addition on the basis of estimation. The assessing officer made addition @ 25% of the alleged bogus purchases. The revenue has not disputed that additions were made merely on the basis of estimation. It is settled law that no penalties is leviable under section 271(1)(c) for ad hoc / estimated additions. Similar view has been taken in the various decisions cited by learned AR for the assessee. Accordingly, we are of the opinion that this is not a fit case for levy of penalty. In the result the grounds of appeal raised by the assessee is allowed.

7. In all the aforesaid cases, the revenue has challenged the orders of the Ld. CIT(A) deleting the penalty levied u/s 271 (1) (c) of the Act on the basis of addition made by the AO on estimation/ad-hoc basis holding that assesseees have obtained bogus purchase bills from hawala parties, therefore failed to establish the genuineness of the transactions. Since, the coordinate Benches have deleted the penalty levied u/s 271 (1) (c) of the Act in the cases having similar set of facts in the aforesaid cases, we respectfully following the decision of the coordinate Benches uphold the orders of the Ld. CIT (A)s and dismiss all the appeals filed by the revenue.

In the result, the captioned appeals filed by the revenue are dismissed.

Order pronounced in the open court on 13th December , 2019.

Sd/-
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 13/12/2019

Alindra, PS

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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