

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5799/Mum/2018
(Assessment Year : 2009-10)**

ITO-29(1)(1), R.No.101 C-10, 1 st Floor B.K.C. Pratyankshakar Bhavan B.K.C. Bandra (E) Mumbai – 400 051	Vs.	Shri Ashish Ramesh Pokar A-11, 122, Geeta Prakash Garodia Nagar Ghatkopar (W) Mumbai – 400 083
PAN/GIR No. AAFPP8570K		
(Appellant)	..	(Respondent)

Revenue by	Shri Michael Jerald
Assessee by	None
Date of Hearing	08/01/2020
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5799/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-39, Mumbai in appeal No.CIT(A)-39/IT-10277/15-16 dated 29/06/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The only issue to be decided in this appeal of the revenue is as to whether the Id. CIT(A) was justified in deleting the levy of penalty u/s.271(1)(c) of the Act in respect of disallowance made on account of bogus purchases on estimated basis.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that the assessment was completed u/s.143(3) r.w.s. 147 of the Act on 20/02/2015 wherein the addition was made on account of bogus purchases in the sum of Rs.1,42,155/-. Penalty proceedings u/s.271(1)(c) of the Act were initiated for the same and penalty was levied for Rs.28,790/- by the Id. AO. We find that the addition made on account of bogus purchases was made on estimated basis @12.5% on the value of alleged purchases. We find that the Id. CIT(A) had deleted the penalty on the ground that since the quantum addition was made on estimated basis, concealment penalty levied thereon would not survive. This fact is not in dispute before us. We find that the Id. CIT(A) had also placed reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of Harigopal Singh vs. CIT reported in 254 ITR 85 (P & H) to support the said proposition. We do not find any infirmity in the said reasoning of the Id. CIT(A) in deleting the penalty. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 15/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
15/01/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai