

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (JM) & Shri S. Rifaur Rahman (A.M.)

ITAs No. 6820 & 6821/Mum/2018(Assessment year :2010-11 & 2009-10)

ITO-27(3)(3), Mumbai	vs	Shri Shashank Harshadrai Shah Prop. Maulik Enterprises 185/C/5135, 2 nd Floor Pant Nagar, Ghatkopar(E) Mumbai-400 075 PAN : ASGPS6595Q
APPELLANT		RESPONDEDNT

Appellant by	Shri V. Vinodkumar Sr DR
Respondent by	None
Date of hearing	15-01-2020
Date of pronouncement	15 -01-2020

ORDER

PER PAWAN SINGH, JM :

1. These two appeals by revenue are directed against the separate orders of learned CIT (A)-25 dated 10-09-2018 for assessment years 2010-11 & 2009-10, respectively. In both the appeals, the revenue has raised identical grounds of appeal; facts for both the assessment years are almost identical, except variation of figures of levy of penalty. Therefore, both the appeals were taken together for hearing and are decided by this consolidated order. For appreciation of facts, the appeal for AY 2009-10 is treated as lead case.

ITA No.6821/Mum/2018 – AY 2009-10

2. The revenue has raised the following grounds of appeal:-

“(i) Whether on the facts and circumstances of the case and in law, the Ld.CJT(A) was correct in deleting the penalty levied of Rs.59,700/- u/s.271(1)(c) of the IT Act as the penalty was levied on quantum additions made on account of bogus purchases, without appreciating that the onus was on the assessee to establish the genuineness of such purchases by producing such parties before the Assessing Officer and the assessee failed to discharge its onus ?

(it) Whether on the facts and circumstances of the case and in law, the Ld.CTT(A) was correct in holding that the AO had made adhoc additions without appreciating that the AO had levied penalty, only after verifying the fact that the assessee evaded the taxes on quantum of additions made on account of bogus purchases and the assessee failed to establish the genuineness of such purchases ?”

3. The brief facts of the case are that the assessee is engaged in the business of whole seller & distributor of hardware, his filed return of income for A.Y. 2009-10 on 29-09-2009 declaring total income at Rs.1,07,377/- and the assessment was completed under section 143(1). Subsequently, the case was reopened u/s 147 on the basis of information that assessee has shown bogus purchases from the parties, who were indulging in providing accommodation entries. Thereafter, the assessment was completed u/s 143(3) r.w.s. 147 on 27-03-2015 assessing total income at Rs.3,06,308/- by making addition of Rs.1,98,931/- on account of bogus purchases. The AO made addition @12.5% of total alleged bogus purchases of Rs.15,91,446/-. The AO also initiated penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961. The AO, vide his order dated 25-09-2015 levied penalty @100% of tax sought to be evaded on such addition estimated on alleged bogus

purchases disallowance. On appeal before CIT(A), the penalty was deleted. The Ld.CIT(A) deleted the penalty by following various decisions of the Tribunal including DCIT vs Rishabh Impex Gulabdas & Co in ITA No.93/Mum/2011 dated 10-04-2015 and Shruti Fastners Ltd vs DCIT 49 CCH 183 (Del) wherein it was held that no penalty is leviable on estimated additions. Thus, aggrieved by the order of Ld.CIT(A), the revenue has filed the present appeal before us.

4. None appeared before us on behalf of assessee despite service of notice of hearing of appeal on the assessee. Therefore, we are left with no option but to decide the appeal on the basis of material available on record and hearing the Ld. departmental representative (DR). The Ld .DR supported the order of AO. The Ld. DR submits that the AO levied penalty only on the addition made in the impugned assessment.
5. We have considered the submission of Ld. DR and carefully gone through the orders of lower authorities. There is no dispute that in the re-assessment, the AO estimated the addition out of the alleged bogus purchases @12.5%. Admittedly, addition was made on estimate basis. The AO levied penalty on estimated additions. It is settled position under the law the no penalty under section 271(1) is leveable on estimated additions made in the assessment order. We have noted that the Ld. CIT(A), deleted the penalty by following the decision of

Tribunal in the case of DCIT vs Rishabh Impex Gulabdas & Co (supra) and Shruti Fastners Ltd vs DCIT(supra). No contrary facts or law has been brought to our notice to take a different view. Therefore, we do not find any merit in the grounds of appeal raised by revenue.

6. In the result, appeal filed by the revenue is dismissed.

ITA No.6820/Mum/2018 – AY 2010-11

7. The revenue has raised identical grounds of appeal in this appeal also, which we have already dismissed. Therefore, following the principle of consistency, the appeal for AY 2010-11 is also dismissed for same reasons.

8. In the result, appeal filed by the revenue is dismissed.

9. As a result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 15-01-2020.

Sd/-

Sd/-

(S. Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 15th January, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai