

THE INCOME TAX APPELLATE TRIBUNAL  
"H" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 5652/Mum/2018 (Assessment Year 2008-09)  
I.T.A. No. 5653/Mum/2018 (Assessment Year 2010-11)  
I.T.A. No. 5654/Mum/2018 (Assessment Year 2013-14)

ITO 5(3)(1) Room No. 526 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	Heena Kapadia 5 <sup>th</sup> Floor Zaver mansion 43, Chowpatty Sea Face Mumbai-400 007.  PAN : AAPPK3918C
(Appellant)		(Respondent)

Assessee by	Shri K. Gopal & Ms. Neha Paranjpe
Department by	Shri Pankaj Kumar
Date of Hearing	05.12.2019
Date of Pronouncement	07.02.2020

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against common order of learned CIT(A) dated 13.6.2018 pertaining to A.Y. 2008-09, 2010-11 & 2013-14.

2. Issue raised is that learned CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Act as under :-

A.Y.	Rs.
2008-09	1,09,571
2010-11	43,594
2013-14	1,90,221

Addition in case of assessee was made on account of information received from the Investigation Wing that the assessee has made bogus purchases from concerns parties controlled and managed by Shri Bhanwarlal Jain group. Hence, unexplained expenditure for the alleged bogus purchase was done by applying peak credit. On these additions penalty was also levied.

3. Upon assessee's appeal in this regard learned CIT(A) noted that the assessee has purchased diamonds from the said parties which were used to make jewellery for her personal use. It was also submitted that the assessee furnished copy of invoices for the purchase of diamonds. That the payment was made by account payee cheque. Source of investment was explained with the maturity proceeds of mutual funds and loan from husband whose bank statement and copy of return was on record. It was submitted that the diamonds was in very much in possession of the assessee. In these circumstances learned CIT(A) held that there was no issue concealment or furnishing of inaccurate particulars of income. Learned CIT(A) accepted that non-production of the purchase party before the Assessing Officer cannot be lead to levy of penalty u/s. 271(1)(c) of the Act. Hence, he deleted the penalty.

4. Against this order the Revenue is in appeals before us.

5. We have heard both the counsel and perused the records. We find that it is settled law that quantum proceedings and penalty proceedings are separate. Facts of the case leading of levy of penalty is the information from Investigation Wing that the assessee has engaged into bogus purchases. These purchase of diamonds turned out to be for making of jewellery which was used for personal use of assessee and jewellery was very much in possession of the assessee. When the purchases were not claimed as expenditure there was no question of applying peak credit theory for unexplained expenditure and consequent levy of penalty is also not sustainable in law. Moreover, as it is emanating from the records the assessee has duly submitted all necessary evidence and credential to prove the genuineness of the purchases which includes invoice and payment through banking channel. Non appearance of the concerned parties before the Assessing Officer cannot lead to levy of penalty u/s. 271(1)(c) of the I.T. Act. Accordingly, we do not find any infirmity in the order of learned CIT(A). Hence, we affirm the same.

6. In the result all these appeals of the Revenue stand dismissed.  
Order has been pronounced in the Court on 7.2.2020.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : /02/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS