

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

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5554/Mum/2018
(Assessment Year : 2010-11)**

Income Tax Officer- 29(2)(5), Building No.C-10, Room No.206 Income Tax Offices, Pratyakshakar Bhavan Bandra-Kurla Complex Bandra (E), Mumbai- 400051	Vs.	Shri Prakash Devshankar Thakkar Satguru Supreme, Mirani Nagar, Valiji Ladha Road Mulund (West) Mumbai – 400 080
PAN/GIR No. AAAPT5471A		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora
Assessee by	None
Date of Hearing	06/02/2020
Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5554/Mum/2018 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-40, Mumbai in appeal No.CIT(A)-40/ITBA-10764/2016-17 dated 25/06/2018

(Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in quashing the penalty levied u/s.271(1)(c) of the Act in respect of addition made towards profit element of alleged bogus purchases.

3. None appeared on behalf of the assessee and no petition for adjournment was made on behalf of the assessee. Accordingly, we proceed to hear the Id. DR and dispose the appeal based on the materials available on record. We find that the addition was made towards profit element on bogus purchases in the sum of Rs.1,59,292/- in the assessment completed u/s.143(3) r.w.s. 147 of the Act dated 16/03/2016. Pursuant to this addition, penalty u/s.271(1)(c) of the Act vide order dated 25/09/2016 in the sum of Rs.47,788/- being 100% of tax sought to be evaded on the addition of Rs.1,59,292/-. The Id. CIT(A) deleted the penalty u/s.271(1)(c) of the Act by placing reliance on the Co-ordinate Bench decision of this Tribunal in the case of ITO vs. Etco Telecom Ltd for A.Yrs 2004-05 and 2005-06 in ITA Nos.5243, 5998 & 5999/Mum/2012 dated 17/12/2014 wherein it was held that penalty is not imposable when the quantum addition was made on estimated basis. The said decision also held that if the whole addition was made based on estimation or on the basis of statement of another person that no actual sales were made, it may be a good case for quantum addition but not for imposition of penalty. The existing case before us squarely falls into the ratio laid down by this Tribunal in the case referred to supra which has been rightly followed by the Id. CIT(A) in our considered opinion. Hence, we do not

find any infirmity in the order passed by the Id. CIT(A) 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 14/02/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

14/02/2020

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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