

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 899/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT 5(2)(1) Room No. 525, Aayakar Bhavan, M. k. Road, Mumbai-400020	बनाम/ Vs.	M/s Karp Impex Ltd. GE 3051, 3 rd floor, Bharat Diamond Bourse BKC East, Mumbai-400 051
स्थायीलेखासं./जीआइआरसं./PAN No. AABCK1823F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Drop Singh Meena, DR
प्रत्यर्थीकीओरसे/ Respondentby	:	None
सुनवाईकीतारीख/ Date of Hearing	:	03.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	19.02.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) – 10 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 30.11.18 for Assessment Year (in short AY) 2010-11.

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are, based on the information received from the Sales Tax Department about the accommodation entries obtained by the assessee from Bhanwarlal Jain Group. Accordingly, assessment was reopened u/s 147 of the Act and subsequently assessment was completed u/s 143(3) r.w.s 147 of the Act on 17.03.16. AO completed the assessment while treating the transactions of purchase amounting to Rs. 63,65,39,341/- as not genuine and accordingly he estimated the income of the assessee @ 9% as addition u/s 69C of the Act. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) sustained the addition of bogus purchases, but reduced the disallowance @ 3%. Subsequently, AO initiated penalty proceedings and imposed

penalty. Aggrieved with the above, assessee filed appeal before Ld. CIT(A) and Ld. CIT(A) deleted the penalty as no penalty can be imposed on the estimation by relying on various decisions of Coordinate Bench of ITAT in the case of Deepak Gogri vrs ITO and DCIT vrs. Manohar Manak Alloys Pvt. Ltd.

5. Aggrieved with the above order, revenue has preferred the appeal before us on the ground mentioned herein below:-

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied on disallowance made on account of bogus purchases which was done on the basis of information received from investigation wing."*

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the case falls in exception as per Board Circular No. 3/2018 with regard to addition/disallowance made on account of information received from external agencies."*

3. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.

6. Considered the submission of Ld. DR and material placed on record. We notice from the records that AO initiated penalty proceedings based on his findings on genuineness of purchases and estimated the income @ 9%, whereas the same was reduced by Ld. CIT(A) @ 3%. It is a fact that income of the assessee was estimated. Accordingly, addition was made u/s 69C of the Act. The various courts have held that penalty proceedings cannot be initiated on the basis of estimation of income. In this case, the addition was made by treating the purchases as non-genuine, at the same time, the sales were accepted as declared by the assessee. Since the income was determined by applying estimation of certain percentage on bogus purchases, therefore, it is not proper case to initiate the penalty proceedings.

Accordingly, we are inclined to agree with the findings of Ld. CIT(A). Therefore, grounds raised by the revenue are **dismissed**.

7. In the net result, the appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 19th Feb, 2020.

<i>Sd/-</i> (Vikas Awasthy) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 19.02.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai