

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
'C' BENCH MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM**

**&**

**SHRI PAVAN KUMAR GADALE, JM**

**ITA No.7119/Mum/2018  
(Assessment Year :2011-12)**

ITO-26(1)(5) Room No.708, 7 <sup>th</sup> Floor Pratyakshakar Bhavan BKC, Bandra Mumbai – 400 051	Vs.	Shri Israr Ahmed J B Choudhary 23, Vallabhai Halderbhai Compound, LBS Marg, Kurla (W) Mumbai – 400 070
<b>PAN/GIR No.AAAP15555Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Amit Pratap Singh
Assessee by	None
<b>Date of Hearing</b>	<b>09/09/2020</b>
<b>Date of Pronouncement</b>	<b>09 / 09 / 2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.7119/Mum/2018 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ITO-26(1)(5)/IT-206/2016-17, dated 21/06/2017 (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 effective issue involved in this appeal is as to whether the Id. CIT(A) was justified in reducing the amount of penalty levied u/s 271(1)(c) of the Act for disallowance made on account of bogus purchases.

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(1) of the Act wherein the addition was made on account of bogus purchases in the sum of Rs.3,90,021/-. Penalty proceedings u/s.271(1)(c) of the Act were initiated for the same and penalty was levied for Rs.1,42,000/- by the Id. AO. We find that the addition made on account of bogus purchases was made on estimated basis.

3.1. The Id. CIT(A) in its order has concluded that the assessee has failed to prove that the explanation put forth is bonafide and submissions and contentions of the assessee are not found to be acceptable and therefore, they are rejected and the penalty imposed by the AO is confirmed. However, in view of the fact that the addition made to total income on account of disallowance of expenses being bogus purchase has been reduced to Rs.3,90,201 as against the amount of Rs.5,87,652/- added by the AO and directed the AO to compute the amount of penalty leviable. By this process, only the quantum of penalty was directed to be reduced by the Id. CIT(A).

3.2. We find that ultimately, the penalty has been levied on the disallowance made on account of bogus purchases which was done on an estimated basis. It is trite law that no penalty would survive on an addition / disallowance made on an estimated basis. Hence, we do not

have any hesitation in cancelling the levy of penalty in the instant case. We also find that the revenue cannot have any grievance on the order passed by the Id. CIT(A) in as much as the Id. CIT(A) had only directed the Id. AO to reduce the quantum of penalty due to reduction in the addition amount. Accordingly, the ground raised by the revenue is dismissed.

**4. In the result, the appeal filed by the revenue is dismissed.**

Order pronounced in open court on 09/09/2020.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 09/ 09/2020  
KARUNA, *sr.ps*

**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