

आयकर अपीलीय अधिकरण  
मुंबई पीठ "ई"  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
आअसं. 3295/मुं/2019 (नि. व.2011-12)  
ITA NO. 3295/MUM/2019 (A.Y.2011-12)

Asstt. Commissioner of Income Tax 12(2)(1),  
Room No.128E, 1<sup>st</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Ehara Engineering Pvt. Ltd.,  
Gala No.3 & 7, Sant Bhawan,  
Sharma Industrial Estate,  
Walbhat Road, Goregaon East,  
Mumbai 400 063  
PAN: AAACE2667E

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Amit Pratap Singh  
प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 21/09/2020  
घोषणा की तिथि/ Date of pronouncement : 21/09/2020

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-20, Mumbai (in short 'the CIT (A)')

dated 14/03/2019 for the assessment year 2011-12 deleting penalty levied u/s 271(1)(c) of the Income Tax Act, 1961( herein after referred to as 'the Act')

2. Shri Amit Pratap Singh, representing the Department submitted that the Assessing Officer had made addition vide assessment order dated 28/07/2016 passed u/s.143(3) r.w.s. 147 of the Act on account of bogus purchases. The Assessing Officer made addition to the extent of 12.5% of the total bogus purchases. The Assessing Officer, thereafter, on the addition made initiated penalty proceedings u/s 271(1)(c) of the Act. The Assessing Officer vide order dated 30/01/2017 levied penalty of Rs.1,61,102/- u/s. 271(1)(c) of the Act. The CIT(A) deleted the penalty holding that no penalty can be levied on addition made on estimate basis. The Id. Departmental Representative vehemently defended the action of Assessing Officer in levying penalty and prayed for reversing the findings of CIT(A).

3. We have heard the submission made by Id. Departmental Representative and have examined the documents available on record. A perusal of the penalty order dated 30/01/2017 reveal that the addition in respect of bogus purchases was made on mere estimations. The CIT(A) has deleted the penalty by placing reliance on the decision of Hon'ble Punjab & Haryana High Court in the case of Harigopal Singh vs. CIT reported as 258 ITR 85(P&H). It is a well settled legal position that no penalty can be levied on estimated additions. The Hon'ble High Court held that where the addition in the income were made on estimate basis that itself does not lead to the conclusion that the assessee either concealed the particulars of his income or furnished inaccurate particulars of such income. There has to be a positive act of concealment on the part of the assessee and onus to prove this is on the

Department. Thus, where the addition is made merely on estimation, the provisions of section 271(1)(c) of the Act are not attracted. We do not find any infirmity in the order of CIT(A). The impugned order is upheld and the appeal of the Revenue is dismissed being devoid of any merit.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on Monday the 21<sup>st</sup> day of September, 2020.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 21/09/2020  
Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**