



ITA Nos.5708-5709/Mum/2018  
M/s Viva Composite Panel Private Limited  
Assessment Years :2010-11 & 2011-12

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य**  
**एवं माननीय श्री रवीश सूद, न्यायिक सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON’BLE SHRI RAVISH SOOD, JM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.5708/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं./ I.T.A. No.5709/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>ITO-13(3)(3)</b> R.No.227, 2 <sup>nd</sup> Floor Aaykar Bhawan, M.K. Road Mumbai – 400 020	<b>बनाम/</b> Vs.	<b>M/s Viva Composite Panel Pvt. Ltd.</b> Unit No.7, New Tejpal Estate Andheri Kurla Road, Sakinaka Mumbai – 400 072
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AABCV-9909-K</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Vallabh Parmar – Ld. AR
<b>Revenue by</b>	:	Ms. Samatha Mullamudi-Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	27/10/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	27/10/2020

**आदेश / ORDER**

**Per Bench**

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as ‘AY’] 2010-11 & 2011-12 contest separate orders of Ld. Commissioner of Income Tax (Appeals)-21, Mumbai [CIT(A)] *qua* deletion of certain penalty u/s 271(1)(c). In the said orders, Ld. CIT(A) has deleted penalty of Rs.1 Lac & Rs.0.87 Lac for AYs 2010-11 & 2011-



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12 respectively. The facts as well as grounds raised in both the years are identical and adjudication in any year shall equally apply to the other year also. The grounds for AY 2010-11 reads as under: -

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty levied without appreciating the facts that the assessee has failed to prove the genuineness of transaction of the purchases.
2. The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

We have carefully heard the arguments advanced by both the sides. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

2. While framing assessment for AY 2010-11, the assessee was saddled with estimated addition of Rs.3.24 Lacs which was nothing but estimated addition of 12.5% against certain suspicious purchases since the assessee failed to discharge the onus of establishing the genuineness of purchases. Consequently, a penalty of Rs.1 Lac was levied by Ld. AO u/s 271(1)(c) vide order dated 06/12/2017.

3. The Ld. CIT(A) deleted the same by observing that the penalty could not be levied where the additions were made on estimated basis. For the said proposition, reliance was placed, *inter-alia*, on the binding decision of Hon'ble Punjab & Haryana High Court in **Harigopal Singh V/s CIT 258 ITR 85** and Hon'ble Gujarat High Court in **CIT V/s Subhash Trading Co. 221 ITR 110** besides host of various Tribunal decisions which are already enumerated in the impugned order. Therefore, the penalty was deleted. Aggrieved, the revenue is in further appeal before us.



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4. Upon careful consideration, we find that the impugned order would not require any interference on our part for two reasons. Firstly, we concur with the proposition that no penalty could be levied for concealment of income wherein the additions were merely estimated addition. The case law being relied upon by Ld. CIT(A), in this regard, were applicable to the facts of the case. Secondly, the quantum of penalty being disputed by the revenue is below threshold limit of Rs.50 Lacs and therefore, the appeal is not maintainable in terms of latest low tax effect Circular No. 17/2019 dated 08/08/2019 [F.No.279/Misc. 142/2007-TTJ(Pt.) issued by CBDT. This recent circular further enhances the monetary limit fixed in earlier Circular No.3 of 2018 dated 11/07/2018 issued by CBDT as amended on 20/08/2018. Thus, viewing from any angle, the revenue's appeal stands dismissed.

5. Similar are the facts in AY 2011-12 wherein the assessee was saddled with penalty of Rs.0.87 Lac under similar circumstances. The same was deleted by Ld. CIT(A) on the same logic and reasoning. Aggrieved, the revenue is in further appeal before us. Since the facts are identical, applying the adjudication of AY 2010-11, the appeal stands dismissed.

6. Resultantly, both the appeal stands dismissed.

*Order pronounced in the open court on 27<sup>th</sup> October, 2020.*

**Sd/-**

**(Ravish Sood)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 27/10/2020  
Sr.PS, Jaisy Varghese



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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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**