

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 5557/Mum/2018

(Assessment Years: 2010-11)

Tarlika K. Shah 704, Anmol Pride, Opp. Patel Petrol, Off S. V. Road, Near Hyundai Show Room, Goregaon (W), Mumbai – 400104.	बनाम/ Vs.	ITO Ward – 31(3)(2) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABHPS3701Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Hitesh Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Pratap Singh, DR

सुनवाई की तारीख / Date of Hearing	22/10/2020
घोषणा की तारीख /Date of Pronouncement	28/10/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of the Ld.CIT(A)-42, Mumbai, passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeal)- 42, MUMBAI (,hereinafter referred to as 'the CIT(A)') has erred in confirming the penalty of Rs. 1,34,9801- u/s.

271 (1)(c) for furnishing inaccurate particulars of income on the disallowance of bogus purchases of Rs. 5,22,057/-.

The appellant therefore prays that the penalty levied u/s. 271 (1)(c) of Rs. 1,34,980/- being unjustified, unwarranted and bad-in-law be deleted.

2. The brief facts of the case are that the assessee is engaged in the business of trading of building material and has filed the return of income for the A.Y 2010-11 on 24.09.2010 with total income of Rs. 2,72,120/-.The return of income was processed under section 143(1) of the Act. Subsequently, the A.O received information from DGIT (Inv) Mumbai that the assessee has entered into bogus purchases transactions from certain persons,who provides bogus bills as per the information of Sales Tax Department, Government of Maharashtra and assessee is one of the beneficiary and has obtained bills aggregating to Rs.13,31,855/- from five entities. The A.O. based on the information,issued notice under section 148 of the Act. The assessee filed a letter to treat the return of income filed under section 139 of the Act as compliance. Subsequently, the A.O. has issued notice under section 143(2) and 142(1) of the Act. The ld. AR of the assessee appeared from time to time and the case was

discussed. The A.O. considering the facts and the details submitted by the assessee has dealt on the disputed issue and relied on the judicial decisions and estimated the income at 12.5% of bogus purchases, were the details were provided by the assessee which was worked out to Rs. 1,10,224/- and in respect of remaining transactions of Rs. 5,22,057/-, the A.O. made 100% addition and assessed the total income of Rs. 8,95,400/- and passed the order under section 143(3) r.w.s. 147 of the Act dated 28.01.2016. Subsequently, the A.O. initiated proceeding under section 271(1)(c) and called for the explanations. Since the assessee has not filed the details. The A.O. has levied the penalty based on the addition of Rs.5,22,057/- which worked out to Rs.1,34,980/- and passed the order under section 271(1)(c) dated 29.09.2016.

3. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and the submissions of the assessee but confirmed the action of the A.O in levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the LdAR submitted that the CIT(A) has erred in dismissing the assessee's appeal and overlooked the various facts which goes to the root of the case. Further, the LdAR submitted that, in the quantum appeal against the addition of Rs. 5,22,057/-. The Hon'ble tribunal has directed the Assessing officer to restrict the addition on account of bogus purchases estimating at 12.5% of bogus purchases as income and was accepted by the assessee. Therefore, the levy of penalty on estimated income cannot be sustained and prayed for allowing the assessee appeal.

5. Contra, the DR relied upon the orders of lower authorities.

6. We have heard rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the order of the A.O under 143 r.w.s 147 of the Act. The LdAR has emphasized that as against the addition of bogus purchases, the assessee has preferred an appeal before the Hon'ble Tribunal. The Hon'ble tribunal has directed the Assessing officer to restrict the addition on account of bogus purchases

estimating at 12.5% of bogus purchases as income of the assessee. We find strength in the submissions of the LdAR. The A.O has made disallowance of bogus purchases but has accepted the sales in the books of accounts, and whereas the Hon'ble tribunal in ITAno5556/M/2018 order dt13-03-2020 has directed the AO to disallow 12.5% of Bogus purchases. We are of the opinion, that where the addition is sustained on the estimated basis, no penalty u/s 271(1)(c) of the Act can be levied on the estimated income. Accordingly, we, considering the facts and principles of natural justice set aside the order of the CIT(A) and direct the A.O to delete the penalty and allow the grounds of appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28.10.2020

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28/10/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT,
Mumbai