

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

**BEFORE SHRI C. N. PRASAD, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 2019 & 2020/Mum/2019  
(निर्धारणवर्ष / Assessment Year: 2009-10 & 2010-11)

ITO WARD 3 (5), 2 <sup>nd</sup> floor, Rani Mansion, Murbad Road, Kalyan (W), Maharashtra-421301	<b>बनाम/ Vs.</b>	Shri Jatin S. Gandhi, B-201, Sanskardham Apartments, Agra Road, Kalyan(W), Maharashtra-421301
स्थायीलेखासं ./जीआइआरसं ./PAN No. ADZPG0755G		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant</b> by	:	Ms. Samatha M, DR
प्रत्यर्थीकीओरसे/ <b>Respondent</b> by	:	None
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	15.10.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	15.10.2020

आदेश / ORDER

**Per Bench:**

The present Appeals have been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) – 1 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 07.01.2019 for Assessment Year (in short AY) 2009-10 & 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 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. It is noticed that the tax effect of the relief granted by the Ld. Commissioner of Income Tax (Appeals) is below Rs. 50 lacs and as per Circular No.17 of 2019 dated 08.08.2019 issued by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, the CBDT has revised the monetary limit for filing appeals before the ITAT from the existing limit of Rs. 20 lacs to Rs. 50 lacs.

4. Further, we notice from the record that the department has filed the present appeal challenging the order of Ld. CIT(A) in deleting the penalty levied u/s 271(1)(c) of the Act.

5. The brief facts of the case are that AO levied penalty u/s 271(1)(c) of the Act on account of bogus purchases made by the

assessee. On appeal before Ld. CIT(A), Ld. CIT(A) has deleted the penalty by considering that the levy of penalties is merely on disallowances of purchases and not finding of concealment of any particular to reduce taxable income and also by relying on various judgments, Ld. CIT(A) has deleted the penalty and allowed the appeal filed by the assessee.

6. Aggrieved with the above order, revenue is in appeal before us.

7. Considered the rival submission and material placed on record, we notice from the record that the present appeal filed by the revenue is below the monetary limit for filing the appeals before the ITAT to Rs. 50 lacs vide Circular No.17 of 2019 dated 08.08.2019 issued by CBDT.

8. Further on merit, we notice that AO levied penalty u/s 271(1)(c) of the Act on estimation basis without any concrete evidence of actual concealment. As per the law, the provisions of section 271 (1) (c) of the Act would be applicable only where the assessee has concealed the particulars of his income or furnished

inaccurate particulars of such income. However, the estimation of disallowance on bogus purchases by the AO cannot be termed as either concealment or furnishing of inaccurate particulars of income.

9. We find support from the series of decisions by different High Court as well Coordinate Benches of ITAT, i.e. in the case of **Commissioner of Income-tax v. Norton Electronics Systems (P) Ltd. (2014) 41 Taxmann.com 280 (Allahabad HC)**. It was held that *when addition is made on estimate basis, no penalty is sustainable.*

10. We also rely upon the decision in the case of **Asst. Commissioner of Income-tax v. Vision Research Management ('P) Ltd. ITAT Lucknow (2015) 63 Taxmann.com 8 (Lucknow Trib)**, wherein it was held *that Imposition of Penalty upon assessee u/s. 271(1)(c) on basis of ad hoc & estimated disallowance/addition, without bringing any clinching material suggesting concealment of income or furnishing of inaccurate particulars of income, was not justified.*

11. After considering the totality of the facts and circumstances and while considering the above said judgments, we are of the view that there is no *active concealment* of income on the part of the assessee and additions made on *estimation* by the AO do not called for initiation of penalty. Thus, in our view, the penalty levied by AO has rightly been deleted by Ld. CIT(A). Accordingly, the grounds raised by the revenue stands **dismissed**.

12. In the net result, both the appeals filed by the revenue stands **dismissed**.

Orders pronounced in the open court on 15.10.2020.

Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (C. N. Prasad) न्यायिकसदस्य / Judicial Member 15.10.2020
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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