

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 824/Mum/2019**

**(Assessment Years: 2010-11)**

ACIT-9(2)(2) Room No. 203, Aayakar Bhavan, MK. Road, Mumbai.	<b>बनाम/ Vs.</b>	Condot Systems Pvt. Ltd, G-1, Mukund Nagar, Marol Pipe Line, Anderi East, Mumbai – 400053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC1766B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Ms. Shreekala Pardeshi, DR
प्रत्यर्थी की ओर से/Respondent by :	None

सुनवाई की तारीख / Date of Hearing	09/11/2020
घोषणा की तारीख/Date of Pronouncement	17/11/2020

**आदेश / ORDER**

**PER PAVAN KUMAR GADALE - JM:**

The revenue has filed an appeal against the order of the Commissioner of Income Tax (Appeals)-16 Mumbai passed u/sec 271 (1)(c) and 250 of the Act. The sole ground of appeal raised by the revenue that the Ld CIT(A) has erred in law deleting the penalty levied u/sec 271 (1)(c) of the Act by the assessing officer.

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2. The Brief facts of the case are, the assessee company is engaged in manufacturing of contact coder and Ink jet printers and filed the return of income for the A.Y 2010-11 on 06.09.2010 disclosing total income of Rs. 78, 99,770/-. Subsequently, notice u/s 148 of the Act was issued by the assessing officer, as the assessee was involved in obtaining the bogus purchase bills from operators as per the information received from Maharashtra Sales Tax Department. Further, the A.O has issued notice u/s 143(2) and 142(1) of the Act. In response to the notice the LdAR of the assessee appeared from time to time and filed the details. In the assessment proceedings to conduct enquires, the AO has called for the information u/s 133(6) of the Act on the parties to verify the purchase transactions. The A.O was not satisfied with the information submitted in respect of the transactions referred at para 8 of the assessment order and rejected the books of accounts u/sec 145(3) of the Act. The A.O. relied on the judicial decisions and estimated the income @ 12.5% of the unverifiable purchases and assessed the total income of Rs. 1,02,64,900/- and passed the order u/s 143(3) r.w.s

147 of the Act dated 17.03.2016. Subsequently, the A.O initiated penalty proceedings u/s 271(1)(c) of the Act and called for explanations. The assessee has filed the details and explained that the assessee has accepted the addition of 12.5% of estimated income of bogus purchases bills. But the AO has overlooked the facts and is of the opinion that the assessee has concealed the particulars of income and levied the penalty of Rs. 7,30,832/- and passed the order u/s 271(1)(c) dated 27.09.2016.

3. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) considered the grounds of appeal and the submissions of the assessee, that the addition made in respect of alleged bogus purchases were accepted by the assessee to buy peace with the revenue. Further the Ld. CIT(A) considered the factual aspects and the decisions of the Coordinate Bench of the Hon'ble Tribunal referred at para 4.1.1 to 4.1.8 of the order and held that the penalty levied under 271(1)(c) of the Act is not justified and directed the Assessing to delete the penalty and allowed the appeal.

Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Tribunal.

4. At the time of hearing none appeared on behalf of the assessee. The Ld. DR submitted that the LdCIT(A) has erred in deleting the penalty, ignoring the facts that the assessee has ventured into transactions of bogus purchases and has concealed the income.

5. We heard the Ld. DR and perused the material on record. We find the sole crux of the disputed issue that, the revenue is aggrieved with the order of the CIT(A), who has deleted the penalty irrespective of the transactions of the assessee in obtaining the bogus bills from the operators as disclosed, in the web site of Maharashtra Sales Tax Department. We find the assessee in the assessment proceedings has submitted the details and the AO has called for the information u/s 133(6) of the Act from the parties to verify the purchase transactions. The A.O considered the facts and the documents submitted in the assessment proceedings and finally rejected the Books of Accounts u/Sec145(3) of the Act and estimated the income @ 12.5% of the bogus purchases and passed

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the assessment order. Subsequently, penalty was levied u/s 271(1)(c) of the Act by the A.O. The assessee has preferred an appeal against penalty order with the CIT(A). In the course of the appellate proceedings before the CIT(A), it was submitted that the assessee has not contested the quantum addition being estimation of income @12.5% of unverifiable purchases to buy peace with the Income tax department and has accepted the addition and the penalty cannot be levied, when income is estimated by the assessing officer. We are of the opinion that, when the addition is sustained on estimation/ adhoc basis, no penalty u/s 271(1)(c) of the Act can be levied. We find that the LdCIT(A) relied on the Coordinate Bench of Hon'ble tribunal decisions and passed a reasoned order in directing the Assessing Officer to delete the penalty. Accordingly, we are not inclined to interfere with the order of the Ld CIT(A) and upheld the same and dismissed the grounds of appeal of the revenue.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 17.11.2020

Sd/-

(PRAMOD KUMAR)  
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE )  
JUDICIAL MEMBER

Mumbai, Dated 17/11/2020

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