

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'C' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

**ITA No.585/Mum/2019
(Assessment Year :2010-11)**

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|---|-----|---|
| Income Tax Officer 5(2)(4) Mumbai R.No.566, Aayakar Bhavan M.K.Road, Mumbai – 400 020 | Vs. | M/s. Pacific Ferromate Pvt. Ltd., 61, 1 st Floor 74, Patrawala Chawl 5 th Kumbharwada Lane Maruti Mandir Marg Mumbai – 400 004 |
| PAN/GIR No. AADCP6164G | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-----------------------|
| Revenue by | Ms. Shreekala Pardesh |
| Revenue by | None |
| Date of Hearing | 08/12/2020 |
| Date of Pronouncement | 10/12/2020 |
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आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.585/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10/IT-5(2)(4)/348/2015-16 & CIT(A)10/IT-5(2)(4)/349/2015-16 dated 25/10/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The only issue to be decided in the appeal of the revenue is as to whether the Id. CIT(A) was justified in deleting the penalty levied u/s.271(1)(c) of the Act in respect of addition made on account of bogus purchase on an estimated basis.

3. None appeared on behalf of the assessee and the notice issued to the assessee had returned unserved. We have heard the Id. DR and perused the materials available on record. It is not in dispute that assessee had made purchases from two parties totalling to Rs.28,09,166/- whose name appeared in their list of tainted parties in the website of Sales Tax department of Government of Maharashtra. Accordingly, the Id. AO had proceeded to tax the profit percentage embedded in such bogus purchases and made an addition in the assessment. This assessment was accepted by the assessee. Later, the penalty was levied on the said estimated addition made on account of bogus purchases by the Id. AO to tune of Rs.38,000/-. We find that the Id. CIT(A) had deleted the said penalty on the ground that ultimately, the addition per se has been made only on an estimated basis and no penalty could survive on an estimated addition. The Id. CIT(A) had placed reliance on various decisions in support of his contentions in his appellate order including the decision of this Tribunal in the case of Deepak Gogri vs. ITO in ITA No.1396/Mum/2017 dated 23/11/2017. We find ultimately penalty has been levied on an addition made on an estimated basis, which in our considered opinion, will have no legs to stand even if the quantum is not contested by assessee in further appeal. Hence, we hold that the Id. CIT(A) had rightly deleted the penalty in the facts and circumstances of the instant case, accordingly, we do not deem fit to interfere in the said order.

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

Order pronounced on 10/12/2020 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Mumbai; Dated 10/12/2020
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai