

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.4251/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2002-03)

Yatish Impex P. Ltd. 215 Hemlok Apartment 87, Kilachand Street, S. V. RD, Kandivali (W), Mumbai-67.	बनाम/ Vs.	ITO-9(3)(4) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY1225C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri T. S. Khalsa (SR. AR)	

सुनवाई की तारीख / Date of Hearing: 14/12/2020
घोषणा की तारीख /Date of Pronouncement: 09/02/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 18.06.2018 passed by the Commissioner of Income Tax (Appeals)-37, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

- “1. That the Ld. CIT(A) confirmed the penalty 271(1)(c) of the Act Rs.30,00,000/- is quite illegal.
2. That the Ld. CIT(A) dismissed the appeal without considering the proper facts of the case.



3. That thus the confirmation of penalty on estimated assessed income is quite illegal, arbitrary, unwarranted unjustified and bad in law.
4. That the appellant further creave, to leave, to add, to alter and/or to amend any of the aforesaid grounds of appeal as and when necessary."

3. The brief facts of the case are that the assessee filed its return of income declaring total income to the tune of Rs.1,95,722/- on 31.10.2002. Thereafter the case was selected for scrutiny on the basis of information received from the Addl. Director of Income Tax (Inv.), Unit V, Mumbai that the assessee company during the captioned assessment year has claimed bogus/non-genuine commission/brokerage paid to one company viz M/s. Moira Steel Ltd. at 103, Laxmi Tower, 576, M. G. Road, Indore. A survey action u/s 133A was carried out at the business premises of M/s. Moira Steels Ltd. During the course of survey, a statement of Shri Vimal Todi, Director of M/s. Moira Steel Ltd. was recorded in which he admitted that the assessee has made the payment to the tune of Rs.33,42,455/- to M/s. Moira Steel Ltd, in the form of bogus/non-genuine commission/brokerage. On the basis of information, a notice u/s 148 of the I. T. Act was issued. In pursuance of notice, the assessee filed the return of income declaring total income at Rs.1,95,722/- on 13.03.2008. The assessee failed to cooperate with the AO, therefore, the AO rejected the books of accounts and assessed the profit @ 1% of the gross turnover to the tune of Rs.77,53,444/- u/s 144 of the Act. Penalty proceeding was initiated. After the notice of penalty, the penalty in sum of Rs.3,00,000/- was levied.



ITA. No.4251/M/2012
A.Y. 2002-03

Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case filed carefully. It is apparent on record that the assessment of the assessee was completed u/s 144 of the Act rejecting the books of accounts and subsequently the net profit of the assessee was assessed @ 1% of the turnover declared. The net profit was determined at Rs. 77,53,444/-. The assessment was completed by estimating the profit. No penalty is leviable where the assessment was completed on the basis of the estimation of profit. In this regard, we find support of the decision of Hon'ble Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** in which it is specifically held that the no penalty is liable to be sustainable where the profit was estimated. Taking into account all the facts and circumstances mentioned above, we set aside the finding of the CIT(A) on this issue and delete the penalty.

5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 09/02/2021

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 09/02/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.4251/M/2012
A.Y. 2002-03

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**