

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.4437/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO-28(3)(4) Room No.320, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex Vashi, Navi Mumbai-4000703.	बनाम/ Vs.	Shri Vipul P. Shah Shop No. A-1, Industrial House, Sector-21, Turbhe Navi Mumbai-400705.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPS5220L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Ms. Usha Gaikwad (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 17/12/2020

घोषणा की तारीख /Date of Pronouncement: 09/02/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 30.04.2019 passed by the Commissioner of Income Tax (Appeals) -26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

" (1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the penalty of Rs.62,802/- levied u/s 271(1)(c) of the Act as the penalty was levied on quantum additions made on account of bogus purchases,



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without appreciating that the onus was on the assessee to establish the genuineness of such purchases by producing such parties before the Assessing Officer and the assessee failed to discharge his onus"?

(2) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the AO has estimated the income without appreciating that the A.O. has levied penalty. only after verifying the fact that the assessee evaded the taxes on quantum of additions made on account of bogus purchases and the assessee failed to establish the genuineness of such purchases"?

(3) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that assessee has neither concealed the particulars of income nor has it furnished inaccurate particulars of income, there being are no findings of the A.O. that the details furnished by the assessee in his return are found to be inaccurate or erroneous or false, without appreciating the fact that by resorting to bogus purchases / accommodation entry, the assessee made an attempt to reduce the profitability and thereby attempted to avoid taxes, which in itself proves beyond doubt that assessee furnished inaccurate particulars of income"?

(4) The appellant prays that the order of Ld. CIT (A) on the above grounds be reversed and that of the Assessing officer be restored.

(5) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."



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3. The brief facts of the case are that the assessee filed its return of income on 11-10-2010 declaring a total income of Rs.5,39,070. Thereafter the case of the assessee was reopened on the basis of information received from the Investigation Wing of the Department in which it was conveyed that the assessee has taken the bogus purchase entry from the following eight parties: -

S. No.	Tin	Name of the party	Amounts
1	27900588728V	Balaji Trading	2,88,797
2	27140610389V	Daksha Enterprises	8,840
3	27250554020V	Sheetal Trading Co.	57,299
4	27710642619V	G.R. Trade Link	94,994
5	27820645517V	V. M. Udyog	2,01,647
6	27870658730V	Payal Enterprise	2,21,020
7	27710551730V	MR Corporation	1,93,795
8	27720714054V	Kumar Enterprises	2,569
9	27390623201V	Shah Enterprise	5,57,006

Thereafter, the notices were given and after the reply of the assessee, the AO raised the addition to the extent of 12.5% of the bogus purchase in sum of Rs.16,25,967/-. The penalty proceeding was initiated and after the notice, the penalty in sum of Rs.62,802/- was levied. Feeling aggrieved, the assessee filed the present appeal before the CIT(Appeals) deleted the addition. The Revenue was not satisfied, therefore, 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. Before going



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further, we deemed it necessary to advert the finding of the CIT(A) on record: -

“6.3 The AO had basically estimated the profit on alleged bogus purchases being 12.5% of non-genuine purchase and penalty u/s 271(1)(c) of the Act was levied by the AO on such estimated profit. There is a plethora of court decisions which say that where additions are made on estimation, no penalty u/s 271(1)(c) is leviable, there being no concealment of particulars of income or furnishing of inaccurate particulars of income. In the present case, the purchase had been duly shown by the appellant in its books of accounts but it could not produce the partly from whom the purchase had been made. It is not the case of the AO that the impugned purchases have been proved to be bogus conclusively and there were no corresponding sales. In a recent case before the Allahabad High Court in the case of NareshChand Agarwal Vs. CIT 357 ITR 0514 (All), it has been held that

"12. In the instant case, nothing was concealed by the assessee. It was the A. O. who has rejected the books of account in the second round and applied the 8 percent net profit rate prescribed under Section 44 AD. In the instant case, the turnover is more than 40 lacs, so Section 44 AD is not applicable, nonetheless the A. O. has inspired with the provision of Section 44 AD and made the addition by estimating the net profit rate at 8 percent. Rejection of the books of account allowed the A. O. to make the addition on estimate basis. When the addition is made on estimate basis, no penalty under Section 271 (1)(c) of the income Tax Act, can be imposed as per the ratio laid down in the case of Cl. T vs. ArjunPrasadAjit Kumar, (2008) 214 CTR (All) 355, where it was observed that:

"Appeal (High Court)Substantial question of law Penalty under section 271 (1)(c) CIT (A) deleted penalty under section 271(1)(c) on the ground that there being nothing on record that assessee's explanation lacked bone fides, penalty under section 271(1)(c) could not be imposed on the basis of estimating sales and making addition by applying net profit rate same was rightly sustained by Tribunal and no substantial question of law arises"



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6.4 On the similar set of facts, the Hon'ble ITAT, Mumbai has deleted penalty u/s 271(1)(c) of the Act in ITA. No.5586/M/2015 dated 16.01.2017 in the case of DCIT Cir 4(2)(2) Vs. M/s. ManoharManak Alloys P. Ltd.

On the same lines, the Hon'ble ITAT, Mumbai in ITA No. 7519/Mum/2013 dated 08.07.2015 in the case of M/s. Yashraj Films P. Ltd. vs. The A.C.I.T. Central Circle 29, Mumbai has deleted the penalty u/s, 271(1)(c) of the Act levied on addition made on estimation basis. Likewise, the Hon'ble ITAT, Mumbai in ITA No.. 93/Mum/2011 dated 10.04.2015 in the case of DM- 14(2) vs. M/s. Rishabh Impex Gulabdas & Co. deleted the penalty u/s. 271(1)(c) of the Act levied on addition made on estimation basis.

Further, in a recent decision of Delhi ITAT in the case of Shruti Fasteners Ltd. vs. DCIT (2017) 49 CCH 0183 Del Trib and ITAT Mumbai in the case of Rakesh Kumar M. Gupta Vs. ITO (2017) 49 CCH 0066 Mum Trib, it has been held that where income has been estimated, the appellant cannot be said to have concealed particulars of income or furnished inaccurate particulars of income and therefore, penalty u/s 271(1)(c) was not leviable.

6.5 *In the background of the aforesaid discussions and respectfully following the precedents, as above and those relied upon by the appellant, I am of the considered view that the appellant has not concealed the particulars of income and nor has it furnished inaccurate particulars of income, there being no findings of the AO that the details furnished by the appellant in his return are found to be inaccurate or erroneous or false. Accordingly, I delete the penalty of Rs.62,802/- levied by the AO u/s 271(1)(c) of the Act and the grounds of appeal are Allowed."*

5. On appraisal of the above mentioned finding, we find that the CIT(Appeals) has deleted the penalty on the basis of this fact when the profit was estimated then no penalty was leviable. The CIT(A) has relied upon the Hon'ble Allahabad High Court in the case of Naresh Chand Agrwal Vs. CIT 357 ITR 0514 (All) and the decision of the Hon'ble ITAT,



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Mumbai in the case of DCIT Cir 4(2)(2) Vs. M/s. Manoharmanak Alloys Pvt. Ltd. in ITA. No.5586/Mum/2015 dated 16.01.2017 and the decision of Hon'ble ITAT Delhi Bench in the case of Shruti Fastners Ltd. Vs. DCIT (2017) 49 CCH 0183 Del Trib and ITAT Mumbai in the case of Rakeshkumar M. Gupta Vs. ITO (2017) 49 CCH 0066 Mum Trib. Moreover, the Hon'ble Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** has held that the penalty is not leviable when the profit has been estimated on estimation basis. Taking into account all the facts and circumstances of the case, we are of the view that the CIT(Appeals) has decided the matter of controversy judiciously and correctly which is not liable to be interfered at this appellate stage.

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

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

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 09/02/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**