

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2509/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-Circle-3 Room No.02, 6 th Floor Ashar IT Park, B-Wing Wagle Industrial Estate, Road No.16Z Thane(W), Thane-400 0604	बनाम / Vs.	Shri Shankar Krishna Kelkar Prop- M/s Standard Diesel Vishwas Hospital Basement Behind Ghantali Temple Naupada, Thane(W)-400 062
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABBPK-8636-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	None
Revenue by	:	Shri T.S. Khalsa- Ld. Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	01/02/2021
घोषणा की तारीख / Date of Pronouncement	:	01 /02/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2, Pune [in short referred to as 'CIT(A)'], Appeal No. 584/2017-18, dated 29/01/2019 which has deleted penalty of Rs.3.93 Lacs as levied by the Ld. Assessing Officer (AO) u/s 271(1)(c) vide penalty order dated 31/08/2015.

2. Though none appeared for assessee but the material on record was sufficient for disposal of appeal and therefore, the matter was proceeded with for adjudication after hearing Ld. DR, who pleaded for restoration of penalty as levied by Ld. AO.

3. The impugned penalty stem from the fact that that an assessment was framed against the assessee for the year under consideration u/s 143(3) r.w.s. 147 on 06/02/2015, wherein the assessee was saddled with certain additions of Rs.12.88 Lacs on account of *alleged bogus purchases*. Consequently, penalty proceedings were initiated u/s 271(1)(c) in the assessment order against those additions for concealing the particulars of income or furnishing inaccurate particulars of income.

4. During penalty proceedings, the assessee submitted that purchases were genuine and the payment was made to the suppliers through account payee cheques. The purchases remained unverifiable due to non-compliance of provisions relating to VAT by the selling dealers and therefore, the penalty was unjustified. However, rejecting the same, Ld. AO levied penalty of Rs.3.93 Lacs for concealment of income as well as for furnishing inaccurate particulars of income.

5. Upon further appeal, Ld. CIT(A), relying upon the decision of Hon'ble Apex Court in **CIT V/s SSA's Emerald Meadows 386 ITR 13** as well as the decision of Hon'ble Karnataka High Court in **CIT V/s Manjunatha Cotton and Ginning Factory 359 ITR 565**, held that Ld. AO failed to specify the exact charge against the assessee for which the assessee was being penalized. There was lack of clarity in correct application of specific charge i.e. concealment of

income or furnishing of inaccurate particulars of income and therefore, the penalty was to be deleted. Aggrieved, the revenue is in further appeal before us.

6. Upon due consideration of impugned order, we concur with the conclusion of Ld. CIT(A) that there was failure on the part of Ld. AO to specify exact charge for which the assessee was being penalized. There was lack of clarity in correct application of specific charge i.e. concealment of income or furnishing of inaccurate particulars of income. The failure to do so would vitiate penalty proceedings in terms of binding judicial precedents as relied upon by Ld. CIT(A). Therefore, no fault could be found in the impugned order in cancelling the penalty.

7. The appeal stands dismissed.

Order pronounced on 01st February, 2021.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01 /02/2021
Sr.PS, Kasarla Thirumalesh

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.