

**IN THE INCOME TAX APPELLATE TRIBUNAL), 'H' BENCH
MUMBAI**

BEFORE SHRI RAJESH KUMAR, AM

&

SHRI PAVAN KUMAR GADALE, JM

**ITA No.5052/Mum/2019
(Assessment Year :2009-10)**

**ITA No.5053/Mum/2019
(Assessment Year :2010-11)**

&

**ITA No.5054/Mum/2019
(Assessment Year :2011-12)**

Income Tax Officer Ward 1(5), Room No.14 6 th Floor, B-Wing Wagale Industrial Estate Thane West – 400 604	Vs.	Shri Hazratoli Mohd. Yadgar Shamani Prop-M/s. H.A. Steel Traders Sainath Nagar, Nashik Highway Road, Majiwada Thane (W)-400601
PAN/GIR No.ACCPS2585E		
(Appellant)	..	(Respondent)

Revenue by	Shri Gurbinder Singh
Assessee by	None
Date of Hearing	19/01/2021
Date of Pronouncement	22/01/2021

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The aforesaid appeals have been filed by the revenue against the impugned order dated 14/05/2019, passed by the CIT(A)-1, Mumbai, for the assessment year 2009-10, 2010-11 & 2011-12 respectively.

2. The only issue raised in all the appeals is against deletion of penalty by CIT(A) as imposed by the AO u/s.271(1)(c) of the Act on the estimated income on bogus purchases.

ITA No.5052/Mum/2019 (Assessment Year – 2009-10)

3. First we would like to discuss the facts of the case in A.Y.2009-10. The assessee is engaged in the business of trading in Iron and Steel. The assessee filed return of income on 24/09/2009 by declaring income of Rs.2,82,170/- which was processed u/s.143(1) of the Act. Thereafter, AO received information from the Sales Tax department, Government of Maharashtra that assessee was beneficiary of hawala purchase entries and accordingly, the case of the assessee was reopened u/s.147 by issuing notice u/s.148 of the Act. During the course of assessment proceedings, the AO observed that the assessee has made aggregate hawala purchases of Rs.3,11,069/- from two parties and accordingly, called for the assessee to prove the genuineness of the same. The AO also issued notice u/s.133(6) of the Act, however, the same were returned unserved. Thereafter, AO finally not finding the submissions of the assessee as tenable, added the entire amount of purchases to the income of the assessee. In the appellate proceedings, the Id. CIT(A) partly allowed the appeal of the assessee by part confirming 50% of the addition. Thereafter, AO issued a show-cause notice to the assessee as

to why the penalty should not be levied for furnishing inaccurate particulars of income. The assessee replied the show cause notice on 19.03.2018 by submitting that assessee had disclosed all the facts qua the purchases in the return of income and in view of Apex Court decision in the case of CIT Vs Reliance Petro Products P Ltd (2010) 322 ITR 158 SC, no penalty is leviable. The AO rejected the contentions of the assessee and levied a penalty of Rs.30,145/- being 100% of tax to be evaded by invoking Explanation-1 to Section 271(1)(c) of the Act.

4. Thereafter, assessee preferred an appeal before the Id. CIT(A) and allowed the appeal of the assessee by holding that no penalty is leviable in case of estimation of income. The Id. CIT(A) followed various orders referred to para No.6 of the appellate order including that of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., (2010) 322 ITR 158 (SC) and finally allowed the appeal of the assessee. Now, aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

5. We have heard the Id. DR and perused the material on record. The undisputed facts are that assessee was beneficiary of hawala purchase entries to the tune of Rs. 3,11,069/- which was added by the AO to the income of the assessee on account of being non-genuine. The Id. CIT(A) partly allowed the appeal of the assessee by partly sustaining the addition at 50% of the bogus purchases. The Id. CIT(A) deleted the penalty

imposed of Rs.30,145/- on the ground that no penalty is leviable in case of estimation of income. While passing the order, Id. CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., (supra) wherein the Hon'ble Supreme Court has held that if assessee has furnished all the details of expenditure as well as income in its return of income which was not found to be inaccurate nor could be viewed as the concealment of income on its part. Then it was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, by itself would not, in our opinion, attract the penalty u/s.271(1)(c). Thus, the order passed by Id. CIT(A) appears to be a reasoned order relying upon the Hon'ble Supreme Court decision in the case of CIT vs. Reliance Petroproducts Pvt. Ltd.(supra), and various other decisions of the Co-ordinate Benches. Therefore, we are inclined to uphold the order of Id. CIT(A) by dismissing the appeal of the revenue.

ITA No.5053/Mum/2019 and 5054/Mum/2019 (Assessment Years 2010-11 and 2011-12)

6. The issue raised in these appeals is identical to one as decided by us in ITA No. 5052/Mum/2019 wherein the appeal of the revenue was dismissed. Therefore our decision in ITA No.5052/Mum/2019 shall apply, mutatis mutandis, to these appeals also. Accordingly, we dismiss these appeals of the Revenue.

7. In the result, all the appeals of the Revenue are dismissed.

Order pronounced on 22/01/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai; Dated 22/01/2021
KARUNA, *sr.ps*

Sd/-
(RAJESH KUMAR)
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