

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6922/Mum/2019
(Assessment Year :2010-11)**

Shri Salim E Petiwala R. No.26/27, 1 st Floor Ebrahim Manzil 5, Nabiulla Road Near Saitee Ambulance Mumbai – 400 003	Vs.	ITO- 17(3)(2) 1 st Floor, Kautilya Bhavan Bandra Kurla Complex Mumbai – 400 051
PAN/GIR No.AABPB2749L		
(Appellant)	..	(Respondent)

Revenue by	None
Assessee by	Shri Vijay Kumar Menon
Date of Hearing	15/03/2021
Date of Pronouncement	15/03/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6922/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/ITBA-10002/ITO-17(3)(2)/2018-19 dated 13/04/2018 (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 this appeal is as to whether the Id. CIT(A) was justified in upholding levy of penalty levied u/s.271(1)(c) of the Act in respect of estimated addition sustained on account of bogus purchases in the facts and circumstances of the case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that in the quantum proceedings, this Tribunal vide order dated 29/02/2017 had restricted addition made on account of bogus purchases to 12.5% of value thereon by taxing the profit to the tune of Rs.5,87,155/-. We find that the Id. AO had levied penalty of Rs.1,81,431/- u/s.271(1)(c) of the Act in respect of this sustained addition. Even though this Tribunal had sustained the quantum addition to the extent of 12.5% of value of tainted purchases, it cannot be brushed aside that the said addition had been made on an estimated basis on the possible premise that assessee could have made purchases in the grey market in order to have some savings in indirect taxes and incidental profit element thereon. Such profit element had been estimated @12.5% of value of tainted purchases and brought to tax in the quantum proceedings. There could not be any conscious concealment of income or filing of inaccurate particulars of income that could be attributed to the assessee in this regard, warranting levy of penalty u/s.271(1)(c) of the Act. It is trite law that no penalty u/s.271(1)(c) of the Act could be levied on an addition which has been made on an estimated basis. Hence, we hereby direct the Id. AO to delete the penalty u/s.271(1)(c) of the Act. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 15/03/2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated 15/03/2021
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