

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.1230 & 1231/M/2019
Assessment Years: 2006-07 & 2008-09**

ITO 12(2)(2), Aayakar Bhavan, M.K. Road, Mumbai 400 020	Vs.	M/s. Michele Boutique, Shop No.21, Shah House, Mandlik Road, Colaba, Mumbai – 400 005 PAN: AAGFM 6861P
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satya Prakash Singh, A.R.
Revenue by : Shri Vijay Jaiswal, D.R.

Date of Hearing : 22.10.2020
Date of Pronouncement : 15.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the order dated 07.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2006-07 & 2008-09.

ITA No.1230/M/2019 (A.Y. 2006-07)

2. The only issue raised by the assessee is against the confirmation of penalty of Rs.99,983/- by Ld. CIT(A) as levied by the AO under section 271(1)(c) of the Act.

3. The facts in brief are that the assessment in this case was framed under section 144 read with section 148 of the Act vide order dated 16.10.2014 wherein a addition of Rs.10,09,934/-

was made by the AO on account of alleged bogus purchases by adding the entire bogus purchases. The 1d CIT(A) affirmed the order of AO on the quantum addition. Consequently, the AO levied penalty of Rs. 3,33,278/- under section 271(1)(c) of the Act equal 100% of the tax sought to be evaded vide order dated 16.10.2014.

4. The 1d CIT(A) partly allowed the appeal of the assessee by following order of the tribunal wherein the addition was sustained to the tune of 30% of the bogus purchases. Hence the assessee is in appeal before us.

5. After hearing the rival parties and perusing the material on records, we find that in this case the penalty has been levied on the addition made on account of alleged bogus purchases. The AO added the entire amount of bogus purchases to the income of the assessee which was affirmed by the 1d CIT(A) but Tribunal partly allowed the appeal of the assessee by sustaining 30% of the bogus purchases as against 100% by the lower authorities. The primary argument of the assessee was that no penalty is exigible under section 271(1)(c) of the act in case the addition is made on estimation basis. Besides the 1d AR submitted that the assessee has fully and truly disclosed all the particulars of the purchases in the return of income and on this count also no penalty is leviable by relying on the decision of Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products Ltd. 2010 322 ITR 158 SC wherein it has been held that where the assessee has furnished all the details of expenditure as well as income in return of income, it is up to the authorities to accept its claim in the return or not. Merely

because the assessee has claimed expenditure which was not accepted or was not acceptable to the Revenue by itself would not attract the penalty under section 271(1)(c) of the Act. In our opinion, since this is a case of addition on estimation basis, no penalty can be levied for furnishing inaccurate particulars of income. Besides the assessee has made full disclosure of facts in the return of income, therefore it can not be case for levy of penalty in view of the ratio laid down in CIT vs. Reliance Petro Products Ltd.(supra). Accordingly we are inclined to set aside the order of Id. CIT(A) and direct the AO to delete the penalty.

6. Accordingly, appeal of the Revenue is dismissed.

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7. The issue raised in this appeal is similar to one as decided by us in ITA No. 1230/M/2019 A.Y. 2006-07. Therefore our decision in ITA No. 1230/M/2019 would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the Revenue is dismissed.

8. In the result both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 15.12.2020.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 15.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.