

**आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफ़ौर रहमान, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 5493/Mum/2019

(निर्धारण वर्ष / Assessment Years 2010-11)

The Asst. Commissioner of Income Tax, Circle-9(3)(1), Room No. 215, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	बनाम/ Vs.	M/s Dadi Impex Pvt. Ltd. 614, Laxmi Plaza, Laxmi Indl. Esate, Andheri (W), Mumbai-400 053
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCD7223Q		

अपीलार्थी की ओर से/ Appellant by	:	Shri Kailash Karonjiya, DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	22.03.2021
घोषणा की तारीख / Date of pronouncement:	22.03.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-16/DCIT-9(3)(1)/IT-10138/2018-19 dated 15.05.2019. The assessment was framed by the Dy. Commissioner of Income Tax, Circle- 9(3)(1), Mumbai (in short DCIT/ AO), for the A.Y

2010-11 vide order dated 20.12.2017 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The penalty under dispute was levied by Asst. Commissioner of Income Tax, circle 9(3)(1), Mumbai vide order dated 28.06.2018 under section 271(1)(c) of the Act.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the levy of penalty by Assessing Officer under section 271(1)(c) of the Act for the reason that the assessee has obtained bogus bills of purchases from hawala dealers. For this, Revenue has raised the following ground: -

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act under the provisions section 271(1)(c) of the Act?"*

3. We have heard the learned Sr. DR and gone through the facts on record. We noted that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has obtained bogus purchase bills from certain parties, which are hawala dealers as per the list of suspicious dealers issued by Sales Tax Department, State of Maharashtra. According to Assessing Officer, the assessee has obtained bogus bills from M/s Kritvi Enterprises Pvt. Ltd., M/s Jai Corporation, M/s Prerna Inc. and M/s Vishnu Trading Co. for a total amount of Rs.

2,14,00,000/-. The Assessing Officer during the course of assessment proceedings estimated that the profit rate at the rate of 5% of the alleged bogus purchases and thereby made addition on this count at Rs.10,70,000/-. The additions made by Assessing Officer remain unchallenged.

4. The Assessing Officer initiated the penalty proceedings under section 271(1)(c) of the Act. The Assessing Officer in penalty proceedings noted that the assessee has furnished inaccurate particulars of income in regard to bogus purchases and hence, he levied the penalty proceedings under section 271(1)(c) of the Act at Rs. 3,36,330/- on the additions made of Rs.10,70,000/-. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals).

5. The CIT(A) deleted the penalty by stating that the penalty is levied on estimation of profit element on purchases and the Assessing Officer has made only adhoc estimation of profit on the alleged bogus purchases and treated the same as unexplained expenditure. According to CIT(A), the Assessing Officer has not doubted the sales made by the assessee out of such purchases. The CIT(A) has noted that this fact as also been noted by Assessing Officer in his order vide Para 4.22 and 4.23 as under:

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*"4.22 In the present case, the parties have been held to be bogus based on the statement recorded during the enquiry. The assessee has not been able to produce parties for verification and the*

*notices issued u/s 133(6) have returned unserved. In the assessee's case, the sales are not doubted. The motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits.*

*4.23. Considering the facts of the case as well as the various case laws cited. I estimate the suppressed profit to the extent of 5% of the purchases made from the bogus entities as the suppressed Profit element embedded in such purchases. Thus, addition is made to total income at the rate of 5% of bogus purchases of Rs 2,14,00,000/- which amounts to Rs 10,70,000/-."*

6. We noted that the CIT(A) has relied on the findings of the Assessing Officer that once, the sales has not doubted, he has only estimated the profit and on estimation of profit, the penalty cannot be levied. Even otherwise, the assessee has produced the complete invoices of purchases, payment was made by account payee cheque and further, the stock tally was also produced before the Assessing Officer during the assessment proceedings. Once, all the documentary evidences were produced before the Assessing Officer and sales are no doubted, it is doubtful, whether the purchases are bogus or not. Once, there is doubt, the penalty cannot be levied under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income because, the assessee has not furnished any inaccurate particulars of income in this case. Hence,



we are of the view that CIT(A) has rightly deleted the penalty and we confirm the same.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22.03.2021.

Sd/-

(एस रिफ़ौर रहमान / S RIFAUH RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 22.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

**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 (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai