

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.5685/Mum/2019
(Assessment Year: 2010-11)

ACIT, Circle-2(1)(1) Room No. 561, 5 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Casuals Trading and Investment Pvt. Ltd. Office No. 801, Building Shiv Mudra CHSL, W.P. No. 325, Nanda Patkar Road, Vile Parle (E), Mumbai-400 001
PAN/GIR No. AAACC 1447 Q		
(Appellant)	:	(Respondent)

Appellant by	:	Ms. Shreekala Pardeshi
Respondent by	:	None

Date of Hearing	:	18.03.2021
Date of Pronouncement	:	18.03.2021

ORDER

Per Mahavir Singh, VP:

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai ('CIT(A)' for short) in appeal no. CIT(A)-4/e-file-03/JCIT(OSD)-2(1)(2)/2018-19 vide order dated 26.06.2019, confirming the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2010-11 vide order dated 28.03.2018.

2. The only issue in this appeal of the Revenue is against the order of the Id. CIT(A), deleting the penalty levied by the Assessing Officer (A.O. for short) u/s.271(1)(c) of the Act in regard to the disallowance of bogus purchases from the parties identified by the

Sales Tax Department as hawala parties. For this, the Revenue has raised the following ground :

1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the penalty u/s.271(1)(c) without appreciating the fact that the penalty was imposed on the quantum of disallowance of purchases from the parties identified by the Sales Tax Department as Hawala operators and also ignoring the fact that the quantum of addition which was sustained by the Id. CIT(A) himself was accepted by the assessee.
3. We have heard the rival contentions and gone through the facts and circumstances of the case. We note that the A.O. during the course of assessment proceedings made the disallowance of bogus purchases to the extent of Rs.33,64,625/-.
4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) in quantum appeal and the Id. CIT(A) restricted the addition at 12.5% of profit element out of these bogus purchases and restricted the addition to Rs.4,20,478/-.
5. The A.O. initiated the penalty proceedings and levied the penalty on the amount restricted by the Id. CIT(A) at Rs.4,20,478/- and thereby levied the penalty at Rs.1,50,000/-.
6. Aggrieved, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) deleted the penalty by following the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Aero Traders Pvt. Ltd.* (in ITA No. 1097/2009 dated 25.01.2010), wherein the Hon'ble High Court has held as under:
 6. Aggrieved by this order, the revenue filed an appeal before the Tribunal. The Tribunal after hearing the submissions made on behalf of the revenue, came to the conclusion that the CIT(A) had taken the correct decision in deleting the penalty. The operative portion of the impugned order dated 04.12.2008 is as follows:

“As the facts emerge the substantial quantum relief was given by the CIT(A) which has been confirmed by the Tribunal, the balance pertains to estimated rate of profit applied on the turnover of the assessee which in our view does not amount to concealment or furnishing inaccurate particulars. In our view, the CIT(A) has taken right decision in deleting the penalty which is upheld.”

7. The appeal is filed against the above mentioned order of the Tribunal dated 04.12.2008. The finding arrived at by the Tribunal does not warrant interference from this Court as it is purely a finding of fact. No perversity has been pointed in such a finding. Consequently, no substantial question of law arises for consideration. As a result, the appeal is dismissed.
7. We note that the issue is very simple that the Id. CIT(A) restricted the profit rate on bogus purchases made from hawala parties and restricted the addition at Rs.4,20,578/- @ 12.5%. We note that this is purely an estimate on alleged bogus purchases because the assessee is able to file complete details in respects of purchases made as the payments by cheque, complete sale and purchase bills, stock register and even sales are not doubted by the A.O. during the assessment proceedings. Once this is the position, we are of the view that the penalty u/s. 271(1)(c) cannot be levied. The Id. CIT(A) has rightly deleted the penalty and we confirm the same.
8. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 18.03.2021.

Sd/-
(S. Rifaur Rahman)
Accountant Member

Sd/-
(Mahavir Singh)
Vice President

Mumbai; Dated : 18.03.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai