

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4502/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO-28(2)(2) 3 rd Floor, R. No.311 Tower No.5 Vashi Rly Station Complex Vashi Navi Mumbai-400703.	बनाम/ Vs.	M/s. Maurya Tiles Shop No. 4 & 5 Plot No.575- A Vashi Belapur Road Shirvane Nerul Navi Mumbai-400706.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFM6694H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Sanjay Sethi (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 28/01/2021

घोषणा की तारीख /Date of Pronouncement: 07/04/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 30.04.2019 passed by the Commissioner of Income Tax (Appeals) -26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

"(1) "Whether on the facts and circumstances of the case an in law, the Ld. CIT(A) was correct in deleting the penalty of Rs. 43,922/- levied u/s. 271(1)(c) of the Act as the penalty was levied on quantum additions made on account of bogus



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purchase, without appreciating that the onus was on the assessee to establish the genuineness of such purchases by producing such parties before the Assessing Officer and the assessee failed to discharge his onus"?

- (2) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the AO has estimated the income without appreciating that that AO has levied penalty, only after verifying the fact that the assessee evaded the taxes on quantum of additions made on account of bogus purchases and the assessee failed to establish the genuineness of such purchases"?*
- (3) *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in holding that assessee has neither concealed the particular of income nor has it furnished inaccurate particulars of income, there being are no findings of the A.O. that the details furnished by the assessee in his return are found to be inaccurate or erroneous or false, without appreciating the fact that by resorting to bogus purchases / accommodation entry, the assessee made an attempt to reduce the profitability and thereby attempted to avoid taxes, which in itself proves beyond doubt that assessee furnished inaccurate particulars of income"?*
- (4) *The appellant prays that the order of Ld. CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.*



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(5) *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*

3. The brief facts of the case are that the assessee filed its return of income for the A.Y.2011-12 on 23.09.2011 declaring a total income of Rs.5,58,500. The return was processed u/s 143(1) of the I. T. Act, 1961. Notices u/s 147/148 of the Act on 04.03.2016 were issued and served upon the assessee. The case of the assessee was reopened on the basis of information received from the DGIT(Inv.) and Sales Tax Department, Govt. of Maharashtra that the assessee had taken the bogus purchase entry in sum of Rs.1,46,405/- from the following party.:-

S. No.	Name of the Party	Bill Amount Rs.	F.Y.	Hawala TIN
1	M/s. Saj Enterprises	1,46,405/-	2010-11	27960705192V

Thereafter, the total income of the assessee was assessed in sum of Rs.7,04,901/- by including the bogus purchases in sum of Rs.1,46,405/-. The penalty proceeding u/s 271(1)(c) was initiated. The AO levied the penalty in sum of Rs.43,922/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

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4. We have heard the arguments advanced by the Ld. Representative of the Revenue and has gone through the case carefully. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

"6. I have considered the facts of the case and the appellant's submission.



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6.1 The grounds No.1 to 5 of the appeal are against levying of penalty of Rs.43,922/- u/s 271(1)(c) of the Act stating. I have gone through the order levying penalty passed by the AO and the statement of facts. The AO had added Rs 146,405/- to the total income of the assessee. Subsequently, the A.O. passed the penalty order u/s 271(1)(c) of the Act on 20-04-2017 for furnishing inaccurate particulars of income and also for concealing the particulars of income by way of bogus claim of expenditure, levying a minimum leviable penalty of Rs. 43,922/- being 100% of the tax sought to be evaded.

6.2 The appellant has contended that the purchases made by the appellant are genuine and supported by valid documents. The appellant has also contended that it has not concealed any particulars of income nor has it furnished inaccurate particulars of income. The appellant has also contended that purchase was disallowed on ad-hoc basis which also suggested that concerned purchases were not bogus in nature. To buttress its claim, the appellant has relied on a number of case laws as mentioned in its statement of facts.

6.3 The AO had basically estimated the profit on alleged bogus purchases being 100% of non-genuine purchases and penalty u/s. 271(1)(c) of the Act was levied by the AO on such estimated profit. There is a plethora of court decisions which say that where additions are made on estimation, no penalty u/s. 271(1)(c) is leviable, there being no concealment of particulars of income or furnishing of inaccurate particulars of income. In the present case, the purchase had been duly shaven by the appellant in its books of accounts but it could not produce the party from whom the purchase had been made. It is not the case of the AO that the impugned purchases have been proved to be bogus conclusively and there were no corresponding sales. In a recent case before the Allahabad High Court in the case of Naresh Chand Agarwal vs. CIT. 357 ITR 0514 (All), it has been held that:



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"12. In the instant case, nothing was concealed by the assessee. It was the A. O. has rejected the books of account in the second round and applied the 8 percent net profit rate prescribed under Section 44 AD. In the instant case) The turnover is more than 40 lacs, so Section 44 AD is not applicable, nonetheless the A. O. has inspired with the provision of Section 44 AD and made the addition by estimating the net profit rate at 8 percent. Rejection of the books of account allowed the A. O. to make the addition on estimate basis. When the addition is made on estimate basis, no penalty under Section 271(1)(c) of the I. T. Act can be imposed as per the ratio laid down in the case of CIT Vs. Arjun Prasad Ajit Kumar (2008) 214 CTR (All) 355, where it was observed that:

Appeal (High Court) Substantial question of law Penalty under section 271(1)(C) CIT (A) deleted penalty under section 271(1)(c) on the ground that there being nothing on record that assessee's explanation lacked bone fides, penalty under section 271(1)(c) could not be imposed on the basis of estimating sales and making addition by applying net profit rate same was rightly sustained by Tribunal and no substantial question of law arises"

6.4 On the similar set of facts, the Hon'ble ITAT, Mumbai has deleted penalty u/s. 271(1)(c) of in ITA No. 5586/Mum/2015 dated 16.01.2017 in the case of DCIT Cir 4(2)(2) vs. M/s. Manohar Manak Alloys P. Ltd.

On the same lines, the Hon'ble ITAT, Mumbai in ITA No. 7519/Mum/2013 dated 08.07.2015 in the case of m/s. Yashraj Films P. LW. vs. The A.C.I.T. Central Circle 29. Mumbai has deleted the penalty u/s. 271(1)(c) of the Act levied on addition made on estimation basis. Likewise, the Hon'ble ITAT, Mumbai in ITA No. 93/Mum/2011 dated 10.04.2015 in the case of Dar 14(2) vs. M/s. Rishabhimpex Gulabdas &



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Co. deleted the penalty u/s. 271(1)(c) of the Act levied on addition made on estimation basis.

Further, in a recent decision of Delhi ITAT in the case of Shrift; Fastners Ltd. vs. DCIT (2017) 49 CCH 0183 Del Trib and ITAT Mumbai in the case of Rakeshkumar Al. Gupta vs. ITO(2017) 49 CCH 0066 Mum Tub, it has been held that where income has been estimated, the appellant cannot be said to have concealed particulars of income Cr furnished inaccurate particulars of income and therefore, penalty u/s 271(1)(c) was not leviable.

6.5 In the background of the aforesaid discussions and respectfully following the precedents, as above and those relied upon by the appellant, I am of the considered view that the appellant has not concealed the particulars of income and nor has it furnished inaccurate particulars of income, there being are no findings of the AO that the details furnished by the appellant in his return are found to be inaccurate or erroneous or false. Accordingly, I delete the penalty of Rs. 43,922/- levied by the AO u/s. 271(1)(c) of the Act and the grounds of appeal are 'Allowed'."

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of decision of Hon'ble Allahabad High Court in the case of **Naresh Chand Agarwal Vs. CIT (367 ITR 0514)(All)** and on the basis of the Hon'ble ITAT, Mumbai Bench in the case of **DGIT Circle 4(2)(2) Vs. M/s. Manohar Manak Alloys P. Ltd.** and on the basis of the decision of Hon'ble Mumbai Bench in the case of **M/s. Yashraj Films Pvt. Ltd. Vs. ACIT, Central Circle 29, Mumbai** and on the basis of the decision of Hon'ble Gujarat High Court in the case of **CIT vs. Simit P. Sheth 356 ITR 451**. Moreover, the Hon'ble



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Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** has held that the penalty is not leviable when the profit was added on estimation basis. Taking into account all the facts and circumstances of the case, we are of the view that the CIT(Appeals) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 07/04/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/04/2021

Vijay Pal Singh (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 / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai