

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'F' BENCH, MUMBAI
[Coram: Pramod Kumar, Vice President, and,
Vikas Awasthy Judicial Member]**

ITA No.: 5031/Mum/2019
Assessment year: 2009-10

**Income Tax Officer 25(1)(5)
Mumbai**

..... Appellant

Vs.

Shri Urvesh Amritlal Patel
168, Gupta Bhavan, M.V Road, Andheri (E),
Mumbai 400099[PAN: AGWPP7079G]

.....Respondent

Appearances:

Usha Gaikwad for the appellant

None for the respondent

Date of concluding the hearing : February 04, 2021
Date of pronouncing the order : April 30, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 29th May 2019, passed by the learned CIT(A) in the matter of penalty under section 271(1)(c) of the Income Tax Act 1961, for the assessment year 2009-10.

2. Grievances raised by the appellant are as follows:-

1) *"On the facts and in the circumstances of the case and In law, the Id. CIT(A) has erred in deleting the penalty levied by the AO u/s 271 (1)(c) of the I.T. Act, 1961 to the tune of Rs. 11,767/- relevant to quantum addition made by the AO and Id. CIT(A) failed to appreciate the fact that the quantum addition made by the AO is squarely covered under the exceptions mentioned in para 10 of CBDT circular No. 03/2018 dated 11.07.2018 and its 'amendment dated 20.08.2018.*

2) *"On the facts and in the" circumstances of the case and in law, the Id. CIT(A) failed to consider the fact that the quantum addition for the year under consideration was based on the information received from DGIT (Inv), Mumbai that the Hawala Dealers had confirmed on oath before the Sales Tax Department that purchases made by the assessee were without supplying the goods, hence the*

penalty levied on the quantum addition for the year under consideration stands justified''.

3. Learned representative fairly agree that the issue in appeal is now covered in favour of the assessee by a number of decisions of co-ordinate benches of this Tribunal. Learned Departmental Representative, nevertheless, relied upon the stand of the Assessing Officer and justified the impugned penalty of Rs. 11,767/-. The impugned penalty is in respect of alleged bogus purchases of Rs. 2,53,906/- out of which 15% has been confirmed by the CIT(A) on estimated basis. Dealing with a materially similar situation, a co-ordinate bench of this Tribunal has observed as follows:-

1. In the case of Shri Ajay Loknath Lohia, I.T.A. No. 2998/Mum/2017 for the AY 2009-10 vide order dtd. 05/10/2018 the Hon'ble Income Tax Appellate Tribunal Mumbai Bench "A", Mumbai has held that

'Having heard both sides, we find merit in the arguments of the assessee for the reason that although the AO has estimated 25% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The AO never disbelieved information filed by the assessee, but the proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on ad hoc basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, we are of the considered view that mere ITA 2998/Mum/2017 disallowance of purchases on ad hoc basis does not tantamount to wilful furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961. Hence, we are of the considered view that the AO was erred in levying penalty u/s. 271(1)(c) of the Act. Accordingly we direct the AO to delete penalty levied u/s. 271(1)(c) of the Act.'

4. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench - which has also been reproduced by the learned CIT(A) in the impugned order. Respectfully following the same, we approve, the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

5. In the result, the appeals is dismissed. Pronounced in the open court today on the 30th day of April, 2021.

Sd/-
Vikas Awasthy
(Judicial Member)
Mumbai, dated the 30th day of April, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai