

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" Bench, Mumbai**

**Before Shri Pramod Kumar, Vice President  
and Shri Amarjit Singh, Judicial Member**

**ITA No.4587/Mum/2019  
(Assessment Year: 2009-10)**

ITO, Ward 3(1)  
2<sup>nd</sup> Floor, Rani Mansion,  
Murbad Road, Kalyan (West)  
421301

PAN – AMVPP3140P

**(Appellant)**

Shri Bhagwattilal Meethalal  
Patwari, Prop. of M/s National Laminates,  
Vs. Shop No. 8, Nerurkar Building,  
Manpada Road, Dombivali (E),  
421201

**(Respondent)**

Appellant by: Shri Tharian Oommen, D.R

Respondent by: None

Date of Hearing: 17.03.2021

Date of Pronouncement: 31.05.2021

**ORDER**

**PER AMARJIT SINGH, JM**

The revenue has filed the present appeal against the order dated 30.04.2019 passed by the CIT(A)-1, Thane, relevant to assessment year 2009-10 in which the penalty levied by the A.O has been ordered to be deleted. The revenue had raised the following grounds of appeal before us:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without properly appreciating the decisions of the Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. Vs CIT ( Civil Appeal No. 9772 of 2013 )”, the Hon'ble Gujarat High Court's decision in the case of N. K. Proteins Ltd, Tax Appeal No. 242 of 2003 dated 20/06/2016 against which the SLP was dismissed by the Hon'ble Supreme Court and also ignoring the fact that Department received specific credible information in this case from the Sales Tax Department of the State Government of Maharashtra” in respect of non-genuine purchases.
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without appreciating the fact that there was

a definite finding in the assessment order in respect of bogus purchases and of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.

3. It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11/07/2018 amended vide letter dated 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.
4. The appellant craves leave to add, amend, alter or delete any ground of appeal.

2. Brief facts of the case are that the assessee filed its return of income on 01.10.2009 declaring a total income of Rs.6,08,870/-. The case of the assessee was reopened by issuing a notice under Sec. 148 of the Act. Thereafter, the assessment of the assessee was completed on 18.03.2016 assessing total income to the tune of Rs.7,32,308/-. The addition on account of bogus purchase was raised in sum of Rs.1,23,438/-. The assessee is running a proprietary concern in the name & style of M/s National Laminates and doing a business of trading in Plywoods Laminates, Fevicol. The assessee has taken bogus purchase from the 5 parties to the tune of Rs.9,87,503/-. The A.O raised an addition to the extent of 12.5% of the bogus purchase in sum of Rs.1,23,438/-. Penalty proceedings was initiated. The notice was given and after the reply of the assessee, penalty in sum of Rs.1,23,438/- was levied. Feeling aggrieved, the assessee has carried the matter in 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.

3. We have heard the argument advanced by the Id. Departmental Representative and have gone through the case filed carefully. The assessee has already disclosed the facts in his return of income. Subsequently, the case of the assessee reopened on the basis of information received from the DGIT(Inv.), in which the assessee has purchased the bogus purchase entry of 5 parties total in sum of Rs.9,87,503/-. Thereafter, the assessing officer assessed the income @ 12.5% of the bogus purchase in sum of Rs. Rs.9,87,503/-. The CIT(A) while deleting the penalty has relied upon the case of Sir Shadilal Sugar Mills (168 ITR 7051); and the Hon'ble High Court of Karnataka in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 35 taxmann.com 250; and Hon'ble Supreme Court in the case of Dilip N. Shroff Vs. Jt. CIT (2007) 291 ITR 519; and CIT Vs. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC). Undoubtedly, the penalty is not liable to be sustainable in case where the income has been estimated. In this regard we also find support of the decision of Hon'ble Gujarat High Court in the case of National Textiles Vs. CIT (2001) 164 CTR 2009 (Guj). We nowhere found any

illegality and infirmity in the order of the CIT(A) in question, therefore, we upheld the order and dismiss the appeal of the revenue.

4. In the result, the appeal file by the revenue is hereby dismissed.

Order pronounced in the open court on 31.05.2021

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.05.2021  
PS: Rohit

**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.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**