

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच" , मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बालागनेश, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTNT MEMBER
आअसं. 5992/मुं/2019 (नि.व.2009-10)
ITA NO.5992/MUM/2019 (A.Y.2009-10)

ITO-13(2)(4),

R. No. 146B, 1st Floor,

Aayakar Bhavan, M.K. Road,

Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s Swar Creative Art Pvt. Ltd.

303, A Dheeraj Valley,

Sai Baba Complex, Ciba Road,

Goregaon(E), Mumbai-400063.

PAN: AAMCS5447G

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Bharti Singh

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 18/03/2021

घोषणा की तिथि/ Date of pronouncement : 21/05/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as 'the CIT(A)']

dated 21.05.2019, deleting penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Ms. Bharti Singh representing the Department submitted that the assessee had obtained bogus purchase bills amounting to Rs. 17,56,910/- during the period relevant to the Assessment Year (AY) under appeal. The assessee could neither prove genuineness of the dealers nor the genuineness of the purchases. The AO after examining the facts disallowed 25% of the bogus purchases under section 69C of the Act and made addition of Rs. 4,39,228/-. Further, the AO levied penalty of Rs. 1,40,000/- under section 271(1)(c) of the Act vide order dated 20.03.2018 for furnishing inaccurate particulars of income. In appeal by the assessee, the CIT(A) deleted penalty. The DR submitted that the CIT(A) has erred in not appreciating the fact that the assessee has failed to prove genuineness of the purchases and the quantum addition was confirmed by the Tribunal in appeal by the assessee in ITA No. 880/Mum/2017 decided on 21.08.2017.

3. We have heard the submissions made by Id. DR and have examined the orders of authorities below. It is an undisputed fact that the penalty under section 271(1)(c) of the Act has been levied in respect of estimated additions made on bogus purchases. The assessee has allegedly obtained bogus purchase bills to the tune of Rs. 17,56,910/- from hawala operators, the AO has disallowed 25% of such bogus purchases on mere estimations and made addition of Rs. 4,39,228/-. There is no definite finding of furnishing inaccurate particulars of income to the extent of Rs. 4,39,228/- by the Assessing Officer. The Tribunal and various Hon'ble High Courts have repeatedly held that no penalty under section 271(1)(c) of the Act is attracted, where the additions are made merely on estimations.

4. The Hon'ble Delhi High Court in the case of CIT vs. Aero Traders Pvt. Ltd. reported as 322 ITR 326 has held that no penalty under section 271(1)(c) of the Act can be imposed where income is determined on estimate basis. Penalty being quasi criminal proceedings, duty is cast upon the AO to establish guilt of the assessee in concealing the income or furnishing inaccurate particulars of such income.

The Hon'ble Gujarat High Court in the case of CIT vs. Subhas Trading Co. reported as 221 ITR 110 has held that where the AO after rejecting accounts of the assessee has assessed the income by applying estimated Gross Profit (GP) rate, no penalty under section 271(1)(c) is leviable. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT vs. S.P. Bhatt reported as 97 ITR 440.

The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. Reported as 303 ITR 53 has held that where an addition has been made on the basis of estimations and not on account of any concrete evidence of concealment, penalty under section 271(1)(c) of the Act is not leviable.

There are other catina of judgments by Hon'ble different High Courts taking similar view. The different benches of the Tribunal in several decisions have held that penalty under section 271(1)(c) cannot be levied, where the additions have been made on estimations.

5. Thus, in view of our above findings, we find no infirmity in the impugned order deleting penalty levied under section 271(1)(c) of the Act on estimated

bogus purchases. The impugned order is upheld and appeal of the Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **21st** day of May, 2021.

Sd/

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 21/05/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai