

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6528/Mum/2019
(A.Y: 2011-12)

Inmarco Industries Pvt Ltd., Sanjay Bldg, 5B Andheri Kurla Road, Andheri (E), Mumbai – 400059.	Vs.	ACIT 10(1)(1) Aayakar Bhavan, Mumbai.
PAN/GIR No. : AAACI3624R		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Manpreet Duggal, DR

Date of Hearing	04.05.2021
Date of Pronouncement	01.06.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) -21 Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the grounds of appeal:

“1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming penalty levied by the Ld. AO u/s 271(1)(c) of Rs.16000 and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of the IT Act and the rules made there under;

2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming penalty levied by the Ld. AO u/s 271(1)(c) on adhoc disallowance of Rs. 48,000 out of Rs. 3,19,452/- sustained by the CIT(A) and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of IT Act and the rules made there under.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty proceedings without appreciating that no specific charge was made by AO for levy of penalty i.e whether the penalty proceedings has been initiated for concealing of particulars of income or furnishing the inaccurate particulars of income in the show cause notice issued u/s 274 r.w.s 271(1)(c) by stating that neither specific ground was raised on the issue nor any factual details were filed by the appellant during the penalty proceedings, which is wrong and contrary to the facts of the case, the provisions of IT act and the rules made there under;

2. The Brief facts of the case are that, the assessee company is engaged in the manufacturing of fluid sealing products. The assessee has filed the return of income electronically for the A.Y 2011-12 on 29.11.2011 with total income of Rs.5,34,75,916/-.Further, the assessee has filed the revised return of income on 30.03.2013 declaring a total income of Rs.5,35,44,581/- Subsequently, the A.O. has received the information from the Investigation Wing of the income tax Department, Mumbai that the assessee was involved in obtaining the bogus purchase transactions bills from three parties aggregating to Rs.3,19,452/- and the notice was issued

u/s 147 of the Act. The A.O has called for the explanations and genuineness of the transactions. Finally the A.O. has made addition of the bogus purchases and disallowance u/sec14A of the act and assessed the total income of Rs.5,41,45,470/- on 25.03.2014

3. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act and found that the assessee against the quantum addition has filed an appeal with the CIT(A). Whereas, the CIT(A) has restricted the disallowance @ 15% of the bogus purchases. The A.O. was not satisfied with the explanations of the assessee and levied penalty of Rs.16,000/- u/s 271(1)(c) of the Act and passed the order on 20.03.2017.

4. Aggrieved by the penalty order, the assessee has filed the appeal with the CIT(A), whereas, the CIT(A) has confirmed the action of the A.O and sustained the penalty. Aggrieved by the CIT(A) order the assessee has filed an appeal with the Hon'ble Tribunal.

5. At the time of hearing, none appeared on behalf of the assessee. The Ld. DR relied on the orders of lower authorities.

6. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue

is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the assessment order under section 143 r.w.s 147 of the Act. We find the A.O has made disallowance of bogus purchases, whereas, on appeal CIT(A) has estimated the income/Gross Profit @15%. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal of the asses

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 04.06.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.06.2021

KRK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai