

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5810/Mum/2019

(A.Y: 2009-10)

ITO – 12(3)(3) RNo. 224, 2 <sup>nd</sup> Floor, Aayakar Bhavan, MK Road, Mumbai – 400020	Vs.	La Cera Mall Pvt Ltd., Plot No. 44/A, Govt Industrial Estate, Opp PCA laboratory, MG Road, Charkop, Kandivali(W), Mumbai – 400067.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL9996K		
Appellant	..	Respondent

Appellant by :	Shri Ajay Pratap Singh, DR
Respondent by :	None

Date of Hearing	30.03.2021
Date of Pronouncement	01.04.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) - 20, Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961.

At the time of hearing none appeared on behalf of the assessee and we heard the Ld.DR. The revenue has raised the following grounds of appeal.

- 1 *"On the facts and in the circumstances of the case, the 14. CIT (A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.32,052/- without appreciating the facts that the assessee claimed bogus purchases in its Return of Income and thus furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961".*
- 2 *"On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT's Circular no.17/2019 dated 08.08.2019 read with circular no.3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in Para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities".*
- 3 *"The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored".*
- 4 *"The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary".*

2. The Brief facts of the case are that, the assessee company is engaged in the business of dealership of tiles, Sanitary ware, bathroom fittings, accessories and building materials and filed the return of income electronically for the A.Y 2009-10 on 28.09.2009 disclosing the total income of Rs. 2,26,680/- and the return of income was processed u/s 143(1) of the Act.

Subsequently, the case was re-opened u/s 147 of the Act, the A.O. has received the information from the Sales Tax & DGIT (Inv) Wing, Mumbai that the assessee has obtained Bogus purchase bills from M/s. Akshata Enterprises, aggregating to Rs. 4,14,909/- Therefore, the A.O has reason to believe that, the income has escaped assessment and issued notice u/s 148 of the Act. Subsequently, the notice u/s 142(1) of the Act was issued. In compliance the Ld.AR of the assessee appeared from time to time and submitted the details. The A.O considered the material on record and observed that the assessee could not prove the genuineness of the transaction of purchases. Further the A.O has issued notice u/s 133(6) of the Act on the party, to cross verify the claim of the assessee. But the said notice was returned us-served with remark Not Known by the postal authorities. Hence, the A.O dealt on the disputed issue and made addition of the bogus purchases of Rs.4,14,907/- and assessed the total income of Rs.6,41,590/-and passed the order u/s 143(3) r.w.s 147 of the Act on 24.02.2015 Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act. The A.O relied on

the findings in the scrutiny assessment and the submissions made by the assessee in the course of hearing and it was mentioned that in quantum appeal against the addition of bogus purchases Of Rs4,14,907/-the CIT(A) has restricted the disallowance to the extent of Gross Profit @25% which work out to Rd1,03,727/-.On perusal of the facts and explanations, the A.O was not satisfied with the reply as the assessee has indulged in obtaining the bogus purchase bills and therefore levied penalty of Rs.32,052/-and passed order u/s 271(1)(c) of the Act dated 31.03.2018.

3. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A), the CIT(A) considered the grounds of appeal, findings of the A.O and the submissions of the assessee and observed that the A.O has made addition of 100% bogus purchases in the scrutiny assessment U/sec143(3) r.w.s Sec147 of the Act and whereas, the Ld.CIT(A) has restricted the addition by estimating gross profit/income @25%.But the A.O has levied the penalty u/sec 271(1)(c) of the Act on estimated income. The CIT(A) dealt on the provisions of Sec. 271(1)(c) of the Act and relied on

the Coordinate Bench of Hon'ble Tribunal and the Hon'ble High Court decisions and observed that no penalty can be levied on estimated income and directed the A.O to delete the penalty and allowed the assessee's appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) erred in deleting the penalty, whereas the A.O has received the information that, the assessee has obtained bogus purchase bills and the same could not be overlooked and prayed for allowing the revenues appeal. None appeared on behalf of the assessee.

5. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in deleting the penalty overlooking the facts of bogus purchases. Whereas, the Ld.CIT(A) considering the facts and circumstances observed that the penalty cannot be levied on estimated income. We find that the CIT(A) has estimated income/ gross profit@25% on bogus purchases. We are of the opinion that when

the addition is on estimated basis, penalty u/s 271(1)(c) of the Act cannot be levied on such adhoc estimated income. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent evidences or information. Accordingly, we are not inclined to interfere with the order of the Ld.CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue .

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

Order pronounced in the open court on 01.04.2021

Sd/-  
(SHAMIM YAHYA)  
**ACCOUNTANT MEMBER**  
Mumbai, Dated 01.04.2021  
KRK, PS

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

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.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, MUMBAI