

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

ITA No. 5889/Mum/2019

(A.Y: 2009-10)

Jenil Steel India 56/64 1 <sup>st</sup> Floor, Office No. 2, Nanubhai Desai Road, Mumbai - 400004	Vs.	ITO – 19(1)(2) Matru Mandir, Tardeao Road, Mumbai – 400007.
PAN/GIR No. : BEPPS6198B		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Smt. Usha Gaikwad, Sr. DR

Date of Hearing	25.03.2021
Date of Pronouncement	30.03.2021

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) -30 Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the Ld. CIT erred in confirming the order of the AO that penalty levied on our appellant is in order.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT failed to appreciate that there is neither*

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*concealment of particulars of income nor furnishing of inaccurate particulars of income.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT erred in ignoring the facts that addition is made only on estimated basis on account of difference in gross margins earned from sale against purchase from party alleged to be non-genuine. An addition which is made purely on an estimate basis, it cannot be said there is concealment of income.*

4. *The appellant craves leave to add, alter, amend, delete or modify any or all of the above referred grounds of appeal.”*

2. The brief facts of the case are that, the assessee is engaged in the business of trading in ferrous and non-ferrous metals. The assessee has filed the return of income for the A.Y 2009-10 on 28.07.2009 with total income of Rs. 2,97,518/-.The return of income was processed u/s 143(1) of the Act. The A.O has received information from DGIT (Inv.) Wing, Mumbai that the assessee has entered into bogus purchase transactions with several parties who are providing accommodation bills. As per the information of Sale Tax Department, Govt of Maharashtra the assessee is one of the beneficiary and obtained bogus bills aggregating to Rs.19,23,104/-from 3 parties and based on the said information the A.O. has issued notice u/s 148 of the Act. The assessee has filed a letter to treat the return of income filed on 28.07.2009 as due compliance to the notice. Subsequently, the notice

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u/s 143(2) and 142(1) of the Act was issued. In compliance, the Ld.AR of the assessee appeared from time to time and the case was discussed. The A.O considering the facts and details submitted by the assessee has dealt on the disputed issue and required the assessee to prove the purchase transactions are genuine. In compliance the assessee has filed written submissions on 20.01.2015 but the A.O. was not satisfied with the reply and supporting documents. Finally the A.O. has estimated profit element on non-genuine purchases @ 12.5% which works out to Rs2,40,388/- and assessed the total income of Rs. 5,37,906/- and passed the order u/s 143(3) r.w.s 147 of the Act on 05.03.2015.

Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act, Since assessee has entered into bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and also observed that in spite of providing opportunity of hearing none appeared on behalf of the assessee and no details were filed in the penalty proceedings. Therefore, the A.O. has levied penalty based on the addition made in the scrutiny assessment, which worked out to Rs.74,279/- and passed the order u/s 271(1)(c) of the Act on 30.09.2015.

3. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and the submissions of the assessee but the confirmed the action of the A.O in levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

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

5. 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 adhoc disallowance of bogus purchases on estimation of income but has accepted the sales in the books of accounts. 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)

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and direct the assessing officer to delete the penalty and allow the grounds of appeal of the assessee.

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

Order pronounced in the open court on 30.03.2021

Sd/-  
(SHAMIM YAHYA)  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated 30.03.2021

KRK, PS

**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