

**IN THE INCOME TAX APPELLATE TRIBUNAL "F"**  
**BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 6431/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT- Circle-32(3) Room No.732, 7 <sup>th</sup> Floor, Kautilya Bhavan, BKC, Bandra (E), Mumbai- 400051.	<b><u>बनाम/</u></b> Vs.	M/s. Vinay Unique Construction Co. A-8, Om Mahaeshwar Niketan, Harsha Park, Chandavarkar Road, Borivali West, Mumbai- 400092.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : CDOPS6602K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Ms. Usha Gaikwad (Sr. AR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 08/04/2021

घोषणा की तारीख /Date of Pronouncement: 30/06/2021

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 11.07.2019 passed by the Commissioner of Income Tax (Appeals)-44, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

1. "On the facts and in the circumstances of the case, the Ld. CIT (A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.3,25,000/- without appreciating the facts that the assessee claimed bogus purchases in its Return of



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*Income thereby making himself liable for Penalty U/s. 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 Circular no.17/2019 dated 08.08.2019 r.w. Circular No. 3/2018 dtd. 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said Circular 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 IA. 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".*

**4.** The brief facts of the case are that the assessee filed its return of income on 30.09.2011 declaring total income to the tune of Rs. 1,27,39,434 for the A.Y.2011-12. The case was selected for scrutiny and assessment was completed on 25.03.2014 assessing total income to the tune of Rs.2,26,86,010/-. While computing the assessment, the AO has made addition of Rs.49,18,527/- u/s 40(a)(ia) and u/s 69C of the Act on account of bogus purchase. Thereafter, the penalty order was passed on 27.03.2017 in view of the penalty u/s 271(1)(c) of the Act. The AO levied the penalty in sum of Rs.3,25,000/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, the revenue has filed the present appeal before us.

**5.** We have heard the argument advanced by the Ld. Representative of the revenue and has gone through the case carefully. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -



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*“6.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the impugned penalty levied u/s 271(1)(c) of the Act at Rs. 3,25,000/-. The main contentions of the appellant are that it has neither concealed particulars of income nor furnished inaccurate particulars of income; mere rejection of appellant's claim would not automatically lead to levy of penalty and it had submitted necessary evidences in support of its claim, but the same was not accepted by the Ld. AC and where the addition has been made or sustained on an estimation basis the penalty u/s 271(1)(c) of the Act is not leviable. In support of its claim the appellant has placed reliance on various judicial precedents as detailed above. The contentions of the appellant have been considered carefully. The Ld. AO had made the addition on account of bogus purchases u/s 69D of the Act at Rs. 50,28,053/-. However, the Ld. CIT(A) has restricted the same to 20% of such purchases/ accommodation entries. On further appeal, the Honble ITAT has restricted said addition to 12.5%. The facts of the case suggest that the Ld. AC had made said addition on the ground that the appellant could not prove the purchases under consideration from the parties concerned. It is also an admitted fact that the Ld. CIT(A) has restricted said addition to 20%, on estimated/ad-hoc basis and further the Hon'ble ITAT has restricted the same to 12.5% also on estimated/ad-hoc basis. In the case of M/s Earthmoving Equipment Service Corporation in ITA No. 6617/2014, the Hon'ble ITAT Mumbai vide its order dated 02.05.2017 has deleted the penalty levied u/s 271(1) (c) of the Act, where the addition u/s 69C of the Act was made on account of bogus purchases, on the ground that the assessee made a claim which was bonafide and the same was coupled with documentary evidences but the same remained inconclusive for want of confirmation from the suppliers as they could not be traced at given address. Further, the Hon'ble ITAT. Mumbai in the case of Ajay Loknath Lohia in ITA No. 2998/Mum/20 17. vide its order dated 05.10.2018 has deleted the penalty levied u/s 271 (1)(c) of the Act, on the disallowance/addition made @25% on alleged bogus purchases made from hawala dealers based on the information received from the Sales Tax Department and where the appellant had accepted such estimated addition, after holding that though the AC had estimated 25% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases.*



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*6.4.2 From the above it is evident that the facts and circumstances of the present case are similar as to the facts adjudicated by the Hon'ble ITAT Mumbai in above referred cases. Respectfully following the same, I am of the considered opinion that this is not a fit case to levy penalty u/s 271 (1) (c) of the Act. Hence, the impugned penalty levied u/s 271(1)(c) at Rs. 3,25,000/- is DELETED. Accordingly, the Ground Not 1 and 2 raised in appeal are ALLOWED."*

6. On appraisal of the above mentioned finding, we noticed that the CIT(A) has deleted the penalty on the basis of the decision of Hon'ble ITAT Mumbai Bench in the case of **Ajay Loknath Lohia in ITA. No.2998/Mum/2017 dated 05.10.2018**. It is not in dispute that the addition was raised on estimation basis. No penalty is leviable when the income has been assessed on the basis of estimation. 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)**. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage.

7. In the result, appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 30/06/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai दिनांक Dated : 30/06/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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