

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

ITA No. 5782/Mum/2019

(A.Y: 2011-12)

ITO – 32(2)(4) 718, 7 th Floor, Kautilay Bhavan, C-41, TOC-43, G-Block, BKC, Bandra, East – 400051.	Vs.	M/s. Nisha Trading Co. A/903, Jayaram Heights, Kandarpadahisar Link Road Above Mc. Donalds, Mumbai – 400092.
PAN/GIR No. : AAHFN6067B		
Appellant	..	Respondent

Appellant by :	Shri Tharian Oommen, DR
Respondent by :	None

Date of Hearing	08.06.2021
Date of Pronouncement	11.06.2021

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) -44 Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case, Ld.

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CIT(A) erred in deleting the penalty by the A.O u/s 271(1)(c) of Rs. 77,324/- without appreciating the facts that the assessee claimed bogus purchases in its return of income thereby making herself liable for penalty u/s 271(1)(c) of the Act.

2. On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal through 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 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 circular in as much as the addition is based in information received from external sources in the nature of law enforcement agencies, namely, Sale Tax Authorities

3. The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the AO be restored.

2. The Brief facts of the case are that, the assessee is a registered partnership and is engaged in the business of trading/dealer. The assessee has filed the return of income for the A.Y 2011-12 on 30.09.2011 disclosing the total income of Rs.2,39,8810/-.The A.O. has received the information from the Sales Tax & DGIT (Inv) Wing, Mumbai that the assessee has obtained Bogus purchase bills from five parties aggregating to Rs. 20,01,929/-.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 143(2) and 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 parties, to cross verify the claim of the assessee. But the said notices were returned unserved by the postal authorities. Hence, the A.O. has dealt on the disputed issue and made adhoc addition by estimating income @12.5% of bogus purchases and passed the order u/s 143(3) r.w.s 147 of the Act on 22.01.2016.

Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act. The A.O. found that the assessee has failed to prove the genuineness of the transactions. The A.O. has provided opportunity to submit explanations but the assessee for various reasons could not appear in the penalty proceedings. The A.O relied on the findings in the scrutiny Assessment that the assessee has indulged in obtaining the bogus purchase bills. Finally levied

penalty of Rs.77,234/-and passed order u/s 271(1)(c) of the Act dated 27.07.2016.

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 12.5% bogus purchases in the scrutiny assessment U/sec143(3) r.w.s Sec147 of the Act. Whereas the A.O has levied the penalty u/sec 271(1)(c) of the Act on estimated income in the penalty proceedings. 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 partly allowed the assessee 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 none appeared on behalf of the assessee. Contra, 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 revenue appeal.

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 A.O. has estimated income/ gross profit @ 12.5% 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 disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act. 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

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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 11.06.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 11.06.2021

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