

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 4527/Mum/2019
(Assessment Years: 2009-10)**

ITO, Ward 1(5) Ashar IT Park, Rd No. 14, 6 th Floor, B Wing, Wgale Estate, Thane (W)	बनाम/ Vs.	M/s Disha Impex 6/321, Ravi Kiran, 1 st Floor, Deodhar Road, Matunga, Mumbai-400019
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFD4564D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Bharat Andhle, DR
प्रत्यर्थी की ओर से/Respondent by :	None

सुनवाई की तारीख / Date of Hearing	28/01/2021
घोषणा की तारीख /Date of Pronouncement	29/01/2021

आदेश / ORDER

PER RAJESH KUMAR - AM:

The revenue has filed the appeal against the order of the CIT(A)-1, Thane passed u/s 271(1)(c) and 250 of the Act. The revenue has raised the following the grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting*

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the penalty levied u/s 271(1)(c) without properly appreciating the decisions of the Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. Vs CIT (Civil Appeal No. 9772 of 2013)" and the Hon'ble Gujarat High Court decision in the case of N. K. Proteins Ltd, Tax Appeal No. 242 of 2003 dated 20/06/2016 against which the SLP was dismissed by the Hon'ble Supreme Court and also ignoring the fact that Department received specific information in this case from the Sales Tax Department of the State Government of Maharashtra in respect of non-genuine purchase".

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without appreciating the fact that there was a definite finding in the assessment order in respect of bogus purchases and of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.*

3. *The appellant craves leave to add, amend, alter or delete any ground of appeal.*

4. *The order of the CIT(A) may be vacated and that of the assessing officer may be restored.*

2. At the time of hearing none appeared on behalf of the assessee nor any adjournment petition was filed. We heard the Ld.DR and perused the material on record.

3. Brief facts of the case are that, the assessee firm has filed the return of income on 29.09.2009 for the

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A.Y 2009-10 electronically with a total income of Rs. 2,64,409/-. Subsequently, the A.O. has received information from Sales Tax Department of Maharashtra that the assessee has obtained bogus purchase bills from four entities of Rs.3,71,240/-. 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 A.O issued notice u/s 143(2) and 142(1) along with questionnaire were issued. The above notices were returned unserved by the postal authorities and the A.O. observes that the firm is not carrying on activity at present known address. Since there is no response, the Assessing officer made Best judgment Assessment u/sec144 of the Act and made addition of bogus purchases and assessed the total income of Rs. 6,35,650/- and passed order u/sec 144r.w.s147 of the Act on 28-03-2015. Subsequently, the A.O initiated penalty proceedings u/s 271(1)(c) of the Act and levied minimum penalty of Rs. 1,14,710/- and passed the order u/s 271(1)(c) of the Act dated 30.09.2015.

4. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The Ld.CIT(A) after considering the grounds of appeal of the assessee and the findings of the A.O has dealt at page 3 para 5 to 8 of the order and deleted the penalty and allowed the assessee's appeal. Aggrieved by the order, the revenue has filed an appeal with the Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has passed an ex-parte order with out considering the facts that the genuineness of the bogus purchases were not proved and supported the orders of the A.O.

6. We heard the Ld. DR and perused the material on record. The sole crux of the disputed issue with respect to deletion of penalty levied u/s 271(1)(c) of the Act on the bogus purchases by the CIT(A). The Ld. DR could not controvert the findings of the Ld.CIT(A) with cogent evidences or any new information. We find the Ld.CIT(A) has relied on judicial decisions and passed a reasonable order. Accordingly, We do not find any infirmity in the order of the Ld.CIT(A) and uphold the same and dismissed the grounds of appeal of the revenue.

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

Order pronounced in the open court on 29.01.2021

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER
Mumbai, Dated 29/01/2021

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

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.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai