

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

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

**ITA No. 4532/Mum/2019
(Assessment Years: 2011-12)**

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| ITO, Ward 3(3) 2 nd Floor, Rani Mansion Murbad Road, Kalyan – 421301. | बनाम/ Vs. | Majum Enterprises 5-A, Laxmi Niwas, Opp Pandurang Vidyalaya Manpada Road, Dombivali (E) - 421201 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANFM6957F | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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

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

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

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 circumstances of the case and in law, the Ld.

CTT(A) erred in deleting the penalty levied by the AO.

2. Whether on the facts and in the circumstances of the case and in law that the CIT(A) failed to appreciate the fact that the assessee during the assessment proceedings as well as during appellate proceedings could not produce any relevant documentary evidences to substantiate purchases made from M/s Rerna Trading Co. i.e. the bogus entry provider.

3. Whether on the facts and in the circumstances of the case and in law that the CIT(A) failed to appreciate the fact that during the assessment proceedings the assessee accepted that the parties were not genuine and did not prefer for appeal for quantum of addition.

4. Whether on the facts and in the circumstances of the case and in law that the CIT(A) failed to appreciate the fact that the grounds of appeal itself clearly mentioned that the disallowances / additions made by the A.O. were on the basis of information received from the Sales Tax Department of the Govt of Maharashtra in this case and failed to appreciate the decision of Hon'ble Gujarat High Court and approved by Hon'ble Supreme Court in the case of N. K. Proteins Ltd Vs DCIT, in Special Leave Appeal (CC No. 769 of 2017) wherein it was held that when the entire purchases have been found to be bogus then confirming disallowance on percentage basis goes against the principle of section 68 & 69C.

5. The order of the CIT(A) may be vacated and that of the AO 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 is a partnership firm, engaged in the business of stockiest and reseller of electrical goods. The assessee firm has filed the return of income on 30.09.2011 for the A.Y 2011-12 with a total income of Rs.4,60,000/-. Subsequently, the A.O received information from Sales Tax Department of Maharashtra that the assessee has obtained bogus purchase bills from M/s Rema Trading Co. of Rs. 19,919/-. 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. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the tax audit report and financial statements and also filed a letter to treat the return filed on 30.09.2011 as compliance of notice u/s 148 of the Act. The assessee was asked to submit the evidence in respect of genuineness of the purchases and the explanations of

the assessee are not satisfactory. Therefore, the A.O made addition of bogus purchases and assessed the total income of Rs. 4,79,920/- and passed the order u/sec143 r.w.s.147 of the Act dated 12-12-2014. Subsequently, the A.O initiated penalty proceedings u/s 271(1)(c) of the Act and levied minimum penalty of Rs. 6,155/- and passed the order u/s 271(1)(c) of the Act dated 20.07.2015.

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

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has passed an ex-parte order without considering the facts that the genuineness of the bogus purchases were not proved in the assessment proceedings and supported the orders of the A.O.

5. 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

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the Act by the CIT(A). We find that the CIT(A) relied on the judicial decisions and granted the relief. The Ld. DR could not controvert the findings of the CIT(A) with cogent evidences or any information and supported the penalty order. We find the Ld. CIT(A) relied on the Hon'ble supreme court decisions and has passed a reasonable order .Accordingly, we are not inclined to interfere with the order of Ld.CIT(A) and upheld the same and dismiss the grounds of appeal raised by the Revenue.

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

Order pronounced in the open court on 29.01.2021

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29 /01/2021

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.

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