



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND**  
**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA no.5466/Mum./2019  
(Assessment Year : 2013-14)

Income Tax Officer  
Ward-9(3)(4), Mumbai

..... Appellant

v/s

Goldstar Jewellery India Pvt. Ltd.  
Plot no.8, Western Industrial Estate  
OPp. Seepz Main Gate, Andheri (E)  
Mumbai 400 093 PAN – AABCG0505E

..... Respondent

Revenue by : Shri T.S. Khalsa  
Assessee by : None

Date of Hearing – 02.06.2021

Date of Order – 27.07.2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The captioned appeal has been filed by the Revenue challenging the impugned order dated 31<sup>st</sup> May 2019, passed by the learned CIT(A)-16, Mumbai, deleting the penalty of ₹ 9,93,809, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") by the Assessing Officer which pertaining to the assessment year 202013-14.

2. When the appeal was called for hearing neither the assessee nor any of the authorized representatives was present on behalf of the

respondent assessee to represent the case. There is no application for adjournment of hearing either. Consequently, we deem it fit and appropriate to proceed to dispose off the appeal ex-parte qua the respondent assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Facts in brief:- The assessee filed its return of income for the year under consideration on 29<sup>th</sup> November 2013, declaring total income at ₹ 19,00,094. The Assessing Officer, on perusal of the record available before him, noticed that the assessee has made purchases to the tune of ₹ 2,57,29,670, from two parties. Meanwhile, the Assessing Officer received information from the Sales Tax Department, Mumbai, through DGIT (Inv.), Mumbai, a search and seizure action was conducted by the Sales Tax Department in case of Bhanwarlal Group, and found that the said group was engaged in the business of providing accommodation entries in the shape of bogus unsecured loans / bogus shares application / share capital money / bogus bills in short term and long term capital gain and such bogus entries were routed through the companies under its control. It was further noticed by the Investigation Wing that the assessee is one of the beneficiaries of accommodation entries from the said group to the tune of ₹ 2,57,29,670. Accordingly, the Assessing Officer assessed the income @ 12.5% of the non-genuine purchases based on the decision of the

first appellate authority vide its order dated 22<sup>nd</sup> January 2016, rendered in case of Glamour Tin Industries Pvt. Ltd. For coming to this conclusion, he also relied upon other judicial pronouncements. The Assessing Officer, consequent upon such disallowance on account of bogus purchase, penalty proceedings section 271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income vide order dated 26<sup>th</sup> March 2018, imposing 100% penalty sought to be evaded which worked out to ₹ 9,93,809. The assessee being aggrieved filed appeal before the first appellate authority for contesting imposition of penalty under section 271(1)(c) of the Act levied on account of addition made for bogus purchase.

4. The learned CIT(A) deleted the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act by following decisions of the Co-ordinate Bench of this Tribunal, Hon'ble High Court and Hon'ble Supreme Court. The relevant observations of the learned CIT(A) deleting the penalty are as follows:—

*"4.1.1. Vide this ground, the appellant has agitated against levying penalty of Rs.9,93,809/- u/s. 271(1)(c) of the IT Act, 1961. The Ld. AO has initiated the penalty on addition made on account of bogus purchases in the assessment order.*

*6.1.2 During the appellate proceedings, the appellant has pleaded that there is neither concealment of income as all the documentary evidencing the genuineness of the transactions were submitted to the Ld. AO nor the appellant company has furnished inaccurate particulars of income as the appellant company has truly disclose the purchase transaction before the Revenue authorities. Considering these facts I tend to agree with the*

*appellant's contention.*

*4.1.3 In support of my view, I would like to place reliance on decision of Hon'ble jurisdictional ITAT in the case of Dcit 24(2), Mumbai vs Unisynth Chemicals 5967/MUM/2014, held that:-*

*"From a perusal of the finding of the CIT(A) in the impugned order it is seen that the addition of Rs.47,04,960/-, on the basis of which penalty under section 271 (1)(c) of the Act was levied by the Assessing Officer, was on account of undisclosed income on account of bogus purchases and sales. On an appreciation of the material on record we are inclined to concur with the view of the CIT(A) that the explanation put-forth by the appellant in the penalty proceedings was a plausible one, inasmuch as, the circumstances on which the additional income was offered was because the disputed parties with whom these transactions were made were non- cooperative and the appellant having no control over those parties was, therefore, not able to substantiate its claim with necessary material evidence. Therefore, the appellant was constrained in order to avoid lengthy litigation to offer the additional income, which was accepted as such the Assessing Officer. The Hon'ble Apex Court in the case of Mak Data P. Ltd. (2013) 358 ITR 593(SC) while considering the provisions of Explanation 1 to section 271(1)(c) of the Act observed that the general principles of law in respect of penalty for concealment of income, does not grant the appellant automatic immunity from penalty on account of surrender or M/s. Unisynth Chemicals voluntary disclosure of income. As per the provisions of Explanation-1 to section 271(1)(c) of the Act, the question is whether the appellant has offered any explanation for concealment of income or furnishing of inaccurate particulars of income. In the case own hand we find that the requirement laid down by the Hon'ble Court has been met by the appellant inasmuch as, as observed by the CIT(A), the appellant's explanation (supra) which appears plausible and which explanation, though brushed aside by the Assessing Officer as an afterthought, has not been brought out or found to be false in respect of furnishing of particulars. We, therefore, uphold this view of the CIT('A) and consequently uphold her order directing the Assessing Officer to delete the penalty levied in the case on hand for assessment year 2009-10"*

*4.1.4 Also, Reliance is placed on decision of the ITAT in AY 2009-10 in Ajay Loknath Lohia, Mumbai vs ITO ITA 2998/MUM/2017, Mumbai wherein it was held that The AO never disbelieved information filed by the appellant, but he proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on adhoc basis by estimating gross profit on alleged bogus purchases. Therefore,*

*disallowance of purchases on adhoc basis does not tantamount to willful furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Income-tax Act, 1961.*

*4.1.5 Hon'ble Supreme Court in a case cited as CIT vs. Reliance Petro Products Pvt. Ltd. - 322 ITR 158 (SC) decided the identical issue in favour of the appellant. Operative part of which is reproduced for ready reference as under :-*

*"A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the appellant. Secondly, the appellant must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the appellant cannot be held guilty of furnishing inaccurate particulars. In order to expose the appellant to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the appellant, because that is the only document where the appellant can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where there is no finding that any details supplied by the appellant in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate 13 ITA No.4549/Del.12011 particulars regarding the income of the appellant. Such a claim made in the return cannot amount to furnishing inaccurate particulars."*

*6.1.6 The Hon'ble ITAT in the case of Ws Ruchi Developers Vs Income Tax Officer (ITAT Ahmedabad) I.T.A. No. 3348/Ahd/2011, held that*

*"Coming to the penalty appeal, the Tribunal found that the assessee has placed on record the letters addressed to ITO with account of the alleged bogus party. PAN is also written in case of LJmiya Traders and in case of Maruti Traders. The assessee has also placed on record the confirmations by the concerned parties. The AO made addition on the basis that the assessee failed to produce the parties. However, other details in the nature of PANs and confirmations of concerned parties were furnished. Since the AO has not made further enquiry to verify the correctness of*

*confirmations, the arguments of the Revenue was not accepted under these facts. In the instant case, the addition has been confirmed in the quantum proceedings on the basis that the parties from whom purchases were made, was reported to be left by the postal authorities. This reason may be sufficient to sustain the addition, but this basis was not sufficient in the light of the decision of the Coordinate Bench in the case of ACIT vs. Manish Organics India Ltd. wherein the Hon'ble Coordinate Bench has held "This is a case where explanation of the assessee has not been accepted by the Department.. The levy of penalty is merely on disallowance of expenditure and not finding of concealment of any particulars or mala fide intention to reduce the taxable income."The Hon'ble Gujarat High Court in the case of National Textiles v/s CIT has held that "section 68 permits the A.O. to treat unexplained cash credits as income for making certain additions if there is failure by the assessee to give an explanation. However, the addition made on this count automatically cannot justify the penalty levied under section 271(1)(c)". In the light of above, Tribunal was of considered view that the Id.CIT(A) was not justified to confirm the penalty. Therefore, order of Id. CIT(A) was set aside."*

*6.1.7 The Hon'ble Jurisdictional ITAT in the case of Deepak Gogri, Mumbai vs ITO 25(3)(2) 1396/MUM/2017.*

*"In so far as the penalty levied on estimation of profit element on purchases is concerned, we are of the view that Assessing Officer had made only adhoc estimation of profit on certain purchases treated as unexplained expenditure. Assessing Officer did not doubt the sales made by the assessee from out of such purchases. Assessing Officer based on the decision of the Hon ble Gujarat High Court in the case of CIT v. Simit P. Seth (356 ITR 4511 estimated the profit element in such purchases at 12.5% and by reducing the Gross Profit already declared by the assessee. In the circumstances, we hold that there is no concealment of income or furnishing of inaccurate particulars as the profit element was determined by way of adhoc estimation. Coming to the interest, the assessee furnished complete details in the return of income and made a claim and simply because the claim is denied and cannot lead to furnishing of inaccurate particulars or concealment of income. No allegation by Assessing Officer that the assessee failed to disclose the ITA.No.1396/MUIVJ/2017 (A.Y: 2011-12) Shri Deepak Gogri particulars relating to its claim in the return of income. Thus we hold that there is no concealment of income or furnishing of inaccurate particulars of income. Thus we direct the Assessing Officer to delete the penalty levied u/s. 271(1)(c) of the Act."*

*4.1.8 I further reply on following decisions for my view that*

*penalty cannot be levied on addition made on agreed basis.*

- a) CIT v/s Suresh Chandra Mittals (2001) 251 ITR 9 (SC).*
- b) CIT v/s Manjunatha Cotton and Ginning Factory (Ker. HC)*

*4.1.9 With the consideration of all the above judgements, it is clear that where appellant has failed to produce creditor parties in respect of alleged Bogus Purchases while he submitted all other details and evidences and additions been made, It was held that where explanation of the appellant has not been accepted by the Department, The levy of penalty is merely on disallowance of expenditure and not finding of concealment of any particulars or mala fide intention to reduce the taxable income. The addition made on this count automatically cannot justify the penalty levied u/s 271(1)(c).*

*4.1.10 In support of my view, further, I would like to placed reliance on decision of Hon'ble jurisdictional ITAT in the case of DOT vs Unisynth Chemicals 5967/ MUM/ 2014, held that:-*

*"The Supreme Court in the case of Sir Shadilal Sugar and General Mills Ltd. v. CIT [1987] 168 ITR 705, has pointed out that not every case of nondisclosure warrants imposition of penalty as the appellant may forgo a deduction or offer higher sums for taxation for a hundred and one different reasons and all of them cannot be regarded as reasons which are unworthy of acceptance. The Supreme Court in that case held that the Tribunal which had held that penalty was not imposable having regard to the circumstances in the case had held so rightly.*

*The Supreme Court observed that from the appellant agreeing to additions to his income, it does not follow that the amount agreed to be added was concealed income. There may be a hundred and one reasons for such admission. The reasons offered in the case has rightly been held by the Tribunal to be relevant reasons.*

*The question referred to us is therefore, answered in favour of the appellant and against the Revenue."*

*6.1.11 In view of what has been discussed above, I am of the view that A.O. has erred in levying the penalty of Rs.9,93,809 which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, the appeal filed by the appellant is hereby allowed."*

5. Considered the submissions of the learned Departmental Authorities and perused the material on record. As it appears, the

Assessing Officer imposed penalty under section 271(1)(c) of the Act on ad-hoc basis without adducing any evidence on record for concealment of income. Penalty under section 271(1)(c) of the Act is liable to be imposed only where the assessee has concealed its particulars of income or furnished inaccurate particulars. Action of making addition on ad-hoc basis does not result into imposition of penalty u/s 271(1)(c) of the Act and hence cannot be termed as either concealment or furnishing of inaccurate particulars of income. We find support from the series of decisions by different High Courts as well the decision of the Co-ordinate Benches of the Tribunal, wherein it was held that when addition is made on estimate basis, penalty is not sustainable in the eyes of law. In support of this contention, following case laws are relied upon:-

- i) *CIT v/s Norton Electronics Systems (P) Ltd. [2014] 41 taxmann.com 280 (Allahabad HC);*
- ii) *ACIT v/s Vision Research Management (P) Ltd., [2015] 63 taxmann.com 8 (Lucknow) (Trib.);*
- iii) *Prem Chand v/s ACIT, [2014] 52 taxmann.com 95 (Chandigarh) (Trib.);*
- iv) *CIT v/s PHI Seeds India Ltd., [2008] 301 ITR 0013 (Del); and*
- v) *Dilip N. Shroff v/s JCIT [2007] 291 ITR 519 (SC).*

6. The learned Departmental Authorities has not brought any cogent material to prove otherwise warranting interference at the instance of the Revenue. In this view of the matter, we are of the

considered view that the learned CIT(A) was indeed justified in deleting the penalty, as there was no concealment of income on the part of the assessee have been proved by the Revenue and additions made on estimation by the Assessing Officer do not call for initiation of penalty. Consequently, we uphold the order passed by the learned CIT(A) by dismissing the grounds of appeal raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on 27.07.2021

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**Sd/-  
S. RIFAUZ RAHMAN  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 27.07.2021**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai