

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.576/SRT/2018**

**(निर्धारणवर्ष / Assessment Year: (2014-15))**

**(Virtual Court Hearing)**

Smt.Hemanginiben B Patel, 28, Sangam Society, Parle Point, Surat.	V s.	The Deputy Commissioner of Income Tax, Circle-3, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFIPP 2238 Q</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

**आयकरअपीलसं./ITA No.577/SRT/2018**

**(निर्धारणवर्ष / Assessment Year: (2014-15))**

Smt. Bhavnaben Arvindbhai Patel, 27, Adarshnagar Society, Ambatalawadi Katargam, Surat – 395004.	V s.	The Deputy Commissioner of Income Tax, Central Circle-1, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABLPP 4358 M</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

**आयकरअपीलसं./ITA No.578/SRT/2018**

**(निर्धारणवर्ष / Assessment Year: (2014-15))**

Smt. Ritaben Niravbhai Patel, 1003-1004, Santvan Heights, Laxmikant Ashram Road, Katargam, Surat – 395004.	V s.	The Deputy Commissioner of Income Tax, Central Circle-1, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ALXPP 0357 M</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri Vartik Choksi - CA

Respondent by : Ms.Anupama Singla – Sr.DR

**सुनवाईकीतारीख/ Date of Hearing : 07/07/2021**

**घोषणाकीतारीख/Date of Pronouncement: 30/07/2021**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned three appeals filed by different assesseees, pertaining to assessment year 2014-15, are directed against the separate orders passed by the Id.Commissioner of Income Tax (Appeals) [Id. CIT(A)], which in turn arise out of separate penalty order and assessment orders passed by the Assessing Officer under

section 271AB(1) (c ) and under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as ‘the Act’].

2. First, we shall take ITA No.576/SRT/2018 for the A.Y. 2014-15, in the case of Smt. Hemanginiben B. Patel, wherein the grounds of appeal raised by the assessee are as follows:

- “1. *On the facts and in the circumstances of the case, the learned C.I.T.(Appeals) erred in confirming penalty to the extent of Rs.1,04,631/- out of total penalty of Rs.2,24,632/- made by the Assessing Officer by treating the investment in silver articles partly as explained and partly as unexplained without any basis.*
2. *On the facts and in the circumstances of the case, your honors are most respectfully requested to delete the penalty of Rs.1,04,631/-.*
3. *The assessee craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal”*

3. At the outset, Shri Vartik Choksi, Id.Counsel for the assessee begins by pointing out that quantum has been deleted by the Tribunal, therefore, penalty under section 271AAB (1)(c) of the Act should not sustain. The Id.Counsel pointed out that CIT(A) has sustained the addition on account of investment in the silver items amounting to Rs.3,48,771/-. The Assessing Officer has levied the penalty under section 271AAB(1) (c ) of the Act, in respect of quantum addition of Rs.3,48,771/- which was confirmed by the Id.CIT(A). In quantum proceedings, for the A.Y. 2014-15, the assessee filed an appeal before the Tribunal and the Tribunal in its order dated 17.07.2019 has deleted the quantum addition relating to silver item amounting of Rs.3,48,771/-, therefore, penalty relating to the said quantum so deleted, should be quashed.

4. On the other hand, the Id.Departmental Representative(DR) for the Revenue has fairly agreed that quantum addition has been deleted by the Tribunal in assessee’s own case, therefore, penalty may not sustain.

5. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Tribunal in assessee's own case for the A.Y.2014-15, vide ITA NO.1641/AHD/2017, [Smt Hemanginiben B.Patel] has deleted the quantum addition of Rs. 3,48,771/-, observing as follows:

*“7.We have heard the rival submissions and perused the relevant material on record. We find that the assessee has earned agricultural income from sale of sugarcane at Rs.96 Lakh in last seven years which was divided between four members of HUF in which husband of the assessee has received 20 Lakh after deduction of expenses. The assessee and her husband are being assessed from last several assessment years as per details submitted before lower authorities. The CIT (A) has also accepted that as per CBDT instruction, the assessee has should be allowed the weightage of holding of silver coin and article. Considering the spirit of CBDT instruction 1916 and the facts that it is customary to receive such gifts on various occasion. Further, inheritance of such items is also cannot be denied. As per details filed with appellate authorities, the assessee has claimed of having cash in hand of Rs. 41 Lakh in the last six years. Considering, these facts and there is no contradiction in the claim made during search proceeding, we are of the considered opinion the CIT (A) was not justified in accepting part and treating part as unexplained investment. Therefore, the addition of Rs. 3,48,771/- sustained by the CIT (A) is therefore, directed to be deleted. Thus, sole grounds of appeal is allowed.”*

6. It is abundantly clear from the above order of the Tribunal that quantum addition of Rs.3,48,771/- has been deleted, therefore, the penalty relating to said quantum addition, being investment in silver items, would not survive. When foundation is removed then superstructure would automatic falls, meaning thereby, when quantum relating to penalty has been deleted then there would not be any base to levy penalty, hence, we quash the penalty order.

7. In the result, appeal of the assessee is allowed.

8. Now, we shall take ITA No.577/SRT/2018 for the A.Y. 2014-15 in case of Bhavanaben Arvindbhai Patel and ITA No.578/SRT/2018 for the A.Y. 2014-15, in case of Smt. Ritaben Niravbhai Patel.

9. Since, the issues involved in these two appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.578/SRT/2018 in case of Smt. Ritaben Nirvabhai Patel for the A.Y. 2014-15, have been taken into consideration for deciding these two above appeals *en masse*. The issue involved in these two appeals are addition of Rs.6,08,046/- in case of Smt. Bhavanaben A.Patel and addition of Rs.6,10,330/-, in case of Smt.Ritaben Nirvabhai Patel, on account of bogus purchases under section 69C of the Act.

10. Grounds of appeal raised by the assessee in ITA No.578/SRT/2018 for the A.Y. 2014-15 in case of Smt.Ritaben Nirvabhai Patel, are as follows:

- “1. *In law and in the facts and circumstances of the assessee's case, the learned CIT(A) has grossly erred in confirming addition of Rs.6,10,330/- on account of bogus purchase under section 69C of the Act, where such disallowance is uncalled for. The Assessing Officer may be directed to delete the same.*
- 1.2 *In law and in the facts and circumstances of the assessee's case, the learned CIT(A) ought to have appreciated that document furnished during the course of assessment proceedings i.e. invoice copies, confirmation of account with PAN details, bank statement evidencing payment through regular banking channel are sufficient to prove the genuineness of purchase transaction.*
- 1.3 *Without prejudice to above, addition under section 69 of the Act if any to be made on account of bogus purchase then same should be restricted to 5% of alleged bogus purchase considering the decision of Gujarat High Court in the case of Gujarat Ambuja Export Ltd vs ACIT in Appeal no. 845/A/2013 [2014] 43 taxmann.com 244 (Gujarat).*
- 2 *In law and in the facts and circumstances of the assessee's case, the learned CIT(A) has grossly erred in dismissing ground of the assessee's appeal*

*before him challenging the levy of interest u/s 234B and 234C of the Act, on the ground that levy of interest was consequential in nature. The assessee denies its liability to pay interest.*

7 *The assessee craves leave to add, alter, amend and/or withdraw any ground or ground of appeal either before or during the course of hearing of the appeal.”*

11. We advert to the relevant facts. During the course of assessment proceedings, to examine the genuineness of the purchases, notice u/s 133(6) of the Act were issued by the assessing officer to some parties at the address furnished by the assessee during the course of hearing. Of such parties, one case is M/s Vishnu traders, shop no. 4 Radha Krishna Appt Palanpur, Surat. However, the notice issued to M/s Vishnu traders was returned unserved accompanied by a reply from the person operating from the said place that there is no such business entity by the name of Vishnu traders operating from such place and denied having any financial transaction with the assessee. Further on inquiry with the neighbors, it was noticed by the assessing officer that entity has not been there at the address provided by the assessee in the last 4 to 5 years. Under these circumstances, the assessee was requested to show-cause as to why the purchases from the entity i.e., M/s. Vishnu Traders shall not be treated as bogus and expenses claimed as unexplained expenditure u/s 69C of the Act.

12. In response to the same, the assessee had stated before AO that no addition should be made on this count, as assessee has filed copy of ledger account of the above party from its books of account, photo copy of the purchase bills received from the above party, copy of the bank statement of the assessee reflecting the transaction of payment by account payee cheque. However, assessing officer noted that a reply has been received from the above party that he has no financial transaction with the assessee. Further, during the course of survey carried out in the textile group of Shree Hari gems on 6/11/2015, the textile unit, a detailed report of the inspector of the investigation wing was also furnished wherein it has been

reported that there is no such entity named Vishnu traders operating from the address furnished by the assessee. Therefore, the assessing officer held that assessee's submissions without confirmation of the same from M/s Vishnu Traders cannot be accepted. Therefore, an amount of Rs. 6,10,330/- was therefore added to the total income of the assessee u/s 69C of the Act.

13. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id.CIT(A) who has confirmed the action of the Assessing Officer. Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us.

14. The Id.Counsel for the assessee submitted that on account of bogus purchases, entire purchases should not be added and only a percentage of profit earned by the assessee may be added. The Id.Counsel also submitted that in the assessee's trade the addition @ 5% on bogus purchase may be accepted. The Id Counsel therefore prayed before the Bench that addition made by the assessing officer may be deleted.

15. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

16. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that AO during the assessment proceedings issued notices u/s 133(6) to M/s Vishnu Traders to verify the purchases made by the assessee during the year. The notice u/s 133(6) was issued on the address provided by the assessee. This notice was not served at the given address as it was found that no such business entity was operating from the address. The AO also got inquiries conducted from the neighborhood and it was found that no one by this name has been carrying out any trading activity in the last 4 to 5 years. The AO

also observed that during the assessment proceedings a reply was received from the M/s. Vishnu Traders who had denied of any financial transactions with the assessee. The AO treated the purchases as bogus and made the addition of Rs. 6,10,330/- u/s 69C of the Act. Therefore, we note that it is a bogus purchase and there is no proof that the assessee has purchased goods from one person and taken purchase bills from another person. Therefore, considering the totality of the facts and circumstances of the case, we confirm 15% addition on account of bogus purchases in case of both the assessees.

17. In the result, appeal filed by the assessee in in ITA No.577/SRT/2018 for the A.Y. 2014-15 and in ITA No.578/SRT/2018 for the A.Y. 2014-15 are partly allowed in above terms.

18. To sum up, the appeal filed by the assessee in ITA No.576/SRT/2018 for A.Y. 2014-15 is allowed, and appeal in ITA No.577/SRT/2018 for the A.Y. 2014-15 and appeal in ITA No.578/SRT/2018, for the A.Y. 2014-15 are partly allowed.

Order is pronounced on 30/07/2021 by placing result on Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 30/07/2021 /sgr

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS  
ITAT, Surat