

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6868/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Maredia Enterprises 1404, Arcadia, NCPA Marg, Nariman Point, Mumbai- 400021.	<u>बनाम/</u> Vs.	ITO-31(2)(3) Mumbai Now assessed by ITO 17(2)(3) Kautilya Bhavan, BKC, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMFM4130B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Ms. Usha Gaikwad (DR)	

सुनवाई की तारीख / Date of Hearing: 24/05/2021
घोषणा की तारीख /Date of Pronouncement: 27 /07/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 16.09.2019 passed by the Commissioner of Income Tax (Appeals)-28, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

- “1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax erred in confirming penalty u/s 271(l)(c) of the Income Tax Act, 1961 amounting to u/s. 1,11,395/- levied by Income Tax Officer which has been



levied without considering the fact that there has been no concealment within the meaning of concealment given in the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the penalty levied by income Tax Officer and coming to the conclusion that there is a concealment which has been done without considering the fact that the appellant had purchased the material, he had utilized the same partially, he had rejected the balance of the material being of inferior quality, he had made part payment for the quantity consumed and had refused the payment of the balance amount as the goods purchased were not of adequate quality and had written back by crediting the amount to the Profit and Loss account in later year to the extent of Rs.7,24,081/- and accordingly the net debit in profit and loss account being substantially less than amount of disallowance retained by CIT(A) in quantum appeal.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the levy of penalty which has been done without making specific allegation as the alleged notice u/s 274 r.w.s. 271(1)(c) did not contain any specific allegation or reason for issue of notice of concealment and accordingly the same was bad in law and hence order of penalty is not maintainable.
4. Your appellant craves leave to add to, amend, alter or delete any of the above grounds as may be advised."

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2011 declaring total income to the tune of Rs. Nil. The assessment was completed u/s 143(3) of the I. T. Act, 1961 on 24.03.2014 determining assessed income to the tune of Rs. Nil wherein purchase from M/s. Vatsa Enterprises was treated as bogus purchase and disallowed and reduced from work-in-progress (WIP). The penalty proceeding was



initiated. Notice was given and after the reply of the assessee, the penalty to the tune of Rs.1,11,395/- was levied. Feeling aggrieved, the assessee an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the Revenue and perused the record. We noticed that the AO has levied the penalty on account of raising the addition on the bogus purchase. The income was estimated and addition was raised. No penalty is leviable when the income has been estimated. In this regard, we find support of the decision of Hon'ble Punjab & Haryana High Court in the case of **Harigopal Singh Vs. CIT (2002) 258 ITR 85 (P & H)**. We also find support of the decision of the Hon'ble Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** in which it is specifically held that the penalty is not leviable when the profit was estimated on estimation basis. Taking into account all the facts and circumstances of the case, we are of the view that the finding of the CIT(Appeals) is not liable to be sustainable in the eyes of law. Accordingly, we set aside the finding of the CIT(A) on the issue and delete the penalty.

5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 27/07/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/07/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.6868/M/2019
A.Y. 2011-12

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**