

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.5748 to 5750/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2009-10, 2011-12 & 2012-13)

ITO-12(1)(1) Room No.226, 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Ami Riddhi Chem Pvt. Ltd. Office No.3, Gikul Apartments, Haridas Nagar, Shimpoli Road, Borivali West, Mumbai- 400092.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCA7111H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Brajendra Kumar (DR)	
Assessee by:	Shri Ajay Singh (AR)	

सुनवाई की तारीख / Date of Hearing: 02/06/2021
घोषणा की तारीख /Date of Pronouncement: 09/07/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the above mentioned appeals against the order dated 22.05.2019 passed by the Commissioner of Income Tax (Appeals) - 20, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Ys.2009-10, 2011-12 & 2012-13 in which the penalty levied by the AO has been ordered to be deleted.

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2. The revenue has filed the present appeal against the order dated 22.05.2019 passed by the Commissioner of Income Tax (Appeals) -20,



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Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

3. The revenue has raised the following grounds: -

" 1. *"On the facts and in the circumstances of the case, the L.d. CIT (A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.8,76,981/- without appreciating the facts that the assessee claimed bogus purchases in its Return of Income and thus furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961"*.

2. *"On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT instruction no.17 of 2019 dated 08.08.2019 and earlier instruction no.3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities"*.

The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored".

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

4. The brief facts of the case are that the assessee filed its return of income on 28.03.2014 declaring a total income of Rs.5,97,240 for the A.Y.2009-10. Thereafter, the assessee filed revised return of income on 31.12.2009 declaring total income of Rs.5,97,270/-. The return was processed u/s 143(1) of the I. T. Act, 1961. Thereafter the case of the assessee was reopened on the basis of information received from the Sales Tax Department in which it was conveyed that the assessee had claimed the bogus purchases in sum of Rs.3,56,01,590/-. Notice u/s 147/148 of the Act



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was given to the assessee. Subsequently, notices u/s 143(2) & 142(1) of the Act were also given. Thereafter, the income of the assessee was assessed in sum of Rs.4,27,27,969/-. The AO issued the notices u/s 133(6) to the parties which were returned unserved and assessee failed to produce these parties also. During the course of assessment proceedings and during appellate proceedings, the assessee submitted documentary evidences such as payment received against such sales, receipt of material purchases, account payee cheque. The penalty proceeding was initiated. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 8%. Thereafter, the penalty proceeding was initiated and the AO levied the penalty. Assessee filed an appeal before the CIT(A) who deleted the penalty. Feeling aggrieved, the revenue has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the Revenue and has gone through the case carefully. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

"5.1 I have considered the rival contentions. I find that the sum of Rs.28,48,127 in respect of which the penalty was imposed was based on estimate. I find that the AO failed to bring any concrete 'evidence to prove that the sum of Rs.28,48,127/- actually represented income in respect of which inaccurate particulars had been furnished by the appellant. I find that the facts in the case Shri Deepak Gogri vs. ITO in ITA No. 1396/Mum/2017 cited by the appellant is similar to the facts of the appellant's case. In that case, the Hon'ble ITAT held as under:

"6. We have heard the rival submissions perused the orders of the authorities below. 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



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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 [355 ITR 451] 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 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."

5.2 I also find that the facts in the case of Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H) is similar to the facts of the appellant's case. In that case, the question of law before the Hon'ble Court was whether penalty is attracted under section 271(1)(c) of the Act where income is assessed purely on estimate basis and additions are made in the declared income on that basis. In that case, the Honible High Court of Punjab & Haryana held as under:

"3. In order to attract clause (c) of section 271(1), it is necessary that there must be concealment by the assessee of the particulars of his income or if he furnishes inaccurate particulars of such income. What is to be seen is whether the assessee in the present case had concealed his income as held by the Assessing Officer and the Tribunal. He had not maintained any accounts and he filed his return of income on estimate basis. The Assessing Officer did not agree with the estimate of the assessee and brought his income to tax by increasing it to Rs. 2,07,500. This, too, was on estimate basis. The Tribunal agreed that the income of the assessee had to be assessed on an estimate of the turnover but was of the view that the estimate as made by the Assessing Officer was highly excessive and it fixed the total income of the assessee at Rs. 1,50,000 for the year under appeal. It is, thus, clear that there was a difference of opinion as regards the estimate of the income of the assessee. Since the Assessing Officer and the Tribunal adopted different



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estimates in assessing the income of the assessee, it cannot be said that the assessee had 'concealed the particulars of his income' so as to attract clause (c) of section 271(1). There is not even an iota of evidence on the record to show that the income of the assessee during the year under appeal was more than the income returned by him. Additions in his income were made, the particulars of his income or furnished inaccurate particulars of such income. There has to be a positive act of concealment on his part and the onus to prove this is on the department. We are also of the considered view that the Tribunal grossly erred in law in relying on Explanation 1(8) to section 271(1)(c) to raise a presumption against the assessee. The assessee had justified his estimate of income on the basis of household expenditure and other investments made during the relevant period. It is not the case of the revenue that he had, in fact, incurred expenditure in excess of what he had stated. In this view of the matter, it cannot be said that the explanation furnished by the assessee had not been substantiated or that he had failed to prove that such explanation was not bona fide."

5.3 *In view of the decisions discussed above, the penalty imposed is not sustainable. Accordingly, I direct the AO to delete the penalty of Rs. 8,76,981/-. In the result, ground of appeal no.1 is treated as allowed."*

6. On appraisal of the above mentioned finding, we find that the CIT(Appeals) has deleted the penalty on the basis of this fact when the profit was estimated then no penalty was leviable. The CIT(A) has relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of **Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H)** in which the penalty was not held justifiable in case of where the income was assessed on estimation basis. 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 held that the penalty is not leviable when the profit was estimated on estimation basis. After the considering the said decisions and other decisions which have been relied by CIT(A) in his



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decisions mentioned above, we are of the view that the CIT(A) has rightly deleted the penalty. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

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7. All the appeals are on similar ground containing similar facts of the case, therefore, the finding given above while deciding the appeal bearing ITA. No.5748/Mum/2019 is quite applicable to the facts of all cases as mutatis mutandis. Accordingly, we delete the penalty in these appeals also and allowed the appeals of the assessee.

8. In the result, the appeals filed by the revenue are hereby dismissed.

Order pronounced in the open court on 09 /07/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 09/07/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**