

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7298/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO-28(3)(5) Room No.323, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vashi-400703.	बनाम/ Vs.	Yusuf Ahmed Solanki Proprietor of M/s. Sayco Enterprises 54, Sector 1A, Timber Mart, Kopar Khairane, Navi Mumbai- 400709.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AERPS1196J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri T. S. Khalsa (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 20/04/2021
घोषणा की तारीख /Date of Pronouncement: 07/07/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 18.09.2019 passed by the Commissioner of Income Tax (Appeals) -26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

"(I) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the penalty of Ps. 34,643/- levied u/s. 271(1)(c) of the Act as the penalty was levied on quantum additions made on account of bogus purchases, without appreciating that the onus was on the assessee to establish the genuineness of such purchases by producing such



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parties before the Assessing Officer and the assessee failed to discharge his onus"?

- (2) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the AO has estimated the income without appreciating that the A.O has levied penalty, only after verifying the fact that the assessee evaded the taxes on quantum of additions made on account of bogus purchases and the assessee failed to establish the genuineness of such purchases"?*
- (3) *"Whether on the facts that in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that assessee has neither concealed the particulars of income nor has it furnished inaccurate particulars of income, there being are no findings of the A.O. that the details furnished by the assessee in his return are found to be inaccurate or erroneous or false, without appreciating the fact that by resorting to bogus purchases/ accommodation entry, the assessee made an attempt to reduce the profitability and thereby attempted to avoid taxes, which in itself proves beyond doubt that assessee concealed particulars of income"?*
- (4) *The appellant prays that the order of Ld. CIT(A) on the above grounds be reversed and that of the Assessing officer be restored.*
- (5) *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*

3. The brief facts of the case are that the assessee filed its return of income for the A.Y.2010-11 on 15.10.2010 declaring total income of Rs.2,46,347. The return was processed u/s 143(1) of the I. T. Act, 1961. The case of the assessee was reopened on the basis of the information received from the investigation Department in which it was conveyed that the assessee has taken the bogus purchase entry in sum of Rs.9,87,581/- from M/s. Ronak Enterprises. The notice was given and after the reply of the assessee, the assessment was completed by assessing the total income of the assessee in sum of Rs.10,61,740/-. The penalty was initiated. After the



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notice u/s 271(1)(c), the penalty in sum of Rs.1,28,110/- was levied. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the penalty to the extent of Rs.1,13,430/-. The revenue was not satisfied. Therefore, the revenue has filed the present appeal before us.

4. 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: -

“5.2 On the similar set of facts, the Hon’ble ITAT, Mumbai has deleted penalty u/s 271(1)(c) of the Act in ITA. No.5586/M/2015 dated 16.01.2017 in the case of DCIT Cir 4(2)(2) Vs. M/s. Manohar Manak Alloys P. Ltd.

On the same lines. the Hon'ble ITAT, Mumbai in ITA No.75191Mum/2013dated 08.07.2015 in the case of M/s. Yashraj Films P. Ltd. vs. The

A.C./ T. Central Circle 29, Mumbai has deleted the penalty u/s. 271(1)(c) of the Act levied on addition made on estimation basis. Likewise, the Hon'ble ITAT, Mumbai in ITA No. 93/Mum/2011 dated 10.04.2015 in the case of Delhi 14(2) vs. M/s. RishablmpexGulabdas & Co. deleted the penalty u/s. 271(1)(c) of the Act levied on addition made on estimation basis.

Further, in a recent decision of Delhi ITAT in the case of Shruti Fastners Ltd. vs. DOH- (2017) 49 CCH 0183 Del Trib and ITAT Mumbai in the case of Rakesh kumar M. Gupta vs.1T0(2017) 49 CCH 0066 Mum Trib, it has been held that where income has been estimated, the appellant cannot be said to have concealed particulars of income or furnished inaccurate particulars of income and therefore, penalty u/s 271(1)(c) was not leviable.

5.3 In the background of the aforesaid discussions and respectfully following the precedents. as above and those relied upon by the appellant, I am of the considered view that the appellant has not concealed the particulars of income and nor has it furnished inaccurate particulars of income, there being are no findings of the AO that the details furnished by the appellant in his return are found to be inaccurate or erroneous or false. Accordingly, I delete the penalty of



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Rs.34,643/- levied by the AO u/s 271(1)(c) of the Act and the grounds of appeal are 'Allowed'."

5. On appraisal of the above mentioned finding, we find that the CIT(A) has deleted the penalty levied on account of bogus purchase and relied upon the number of cases discussed in the order which has been reproduced above. There is no need to repeat the same. Moreover, the Hon'ble Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** has held that the penalty is not leviable when the profit was estimated. The CIT(A) has passed the well-reasoned order which nowhere required any interfere on behalf us. Taking into account all the facts and circumstances of the case, we are of the view that the CIT(Appeals) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage. Accordingly, we decide all the issues in favour of the assessee against the revenue.

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

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

(PRAMOD KUMAR)
उपाध्यक्ष / VICE PRESIDENT
मुंबई Mumbai; दिनांक Dated : 07/07/2021
Vijay Pal Singh (Sr. PS)

(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**