

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.7678/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-12(3)(4) Room No.145, 1 st Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Mehta Infocom Pvt. Ltd. Mehta House, Af/3, Cama Industrial Estate, NR, Hub Mall, Goregaon (E), Mumbai-400065.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCM2000E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Ms. Usha Gaikwad (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 24/05/2021

घोषणा की तारीख /Date of Pronouncement: 01/07/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 30.09.2019 passed by the Commissioner of Income Tax (Appeals) -20, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

"(1) 1. On the facts and in the circumstances of the case, the Id. CIT (A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.4,76,659/- without appreciating the facts that the assessee claimed bogus purchases in its Original Return of Income and thus furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961.



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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 CBDTs Circular no.17/2019 dated 08.08.2019 read with circular 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.*
3. *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.*
4. *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 on 20.09.2009 declaring a total income of Rs.11,83,690/-. 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 information received from the Sales Tax Department, Maharashtra in which it was conveyed that the assessee has taken the bogus purchase entry in sum of Rs.46,58,583/- from the following party.:-

27530627877V	Shakti Trading Co.	AIOPG8087B	2008-09	18720
27630627877V	Om Corporation	AYZPS5296B	2008-09	694920
27530727877V	Raj Traders	AJIPD9848G	2008-09	1220168
27530627877V	Aryen Sales Corporation	AAQPS2518D	2008-09	1220168
27530627877V	Aayushi Enterprises	AGQPP3867N	2008-09	18720

Notice was given and after the reply of the assessee, the amount in sum of Rs.46,58,583/- was added to the income of the assessee u/s 40(a)(ia) u/s 69C of the Act. The penalty proceeding u/s 271(1)(c) was initiated and after the reply of the assessee, the penalty in sum of Rs.4,76,659/-. Feeling



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aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty but the revenue was not satisfied. Therefore, the revenue has filed the present appeal before us.

4. We have heard the arguments 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. *Decision on grounds of appeal No. Ito 3:*

5.1 I have considered the rival contentions. The appellant has contended that the notice issued u/s.274 r.w.s. 271(1)(c) was defective in as much as the inappropriate portions were not struck off. However, the appellant could not substantiate its claim. Copy of the notice u/s.274 r.w.s. 271(1)(c) has not been furnished, though in his submission the appellant-his stated that the copy had been enclosed. Therefore, this contention of the appellant is dismissed.

5.2 Coming to the merits of the case, I find that the sum of Rs.14,28,587/- 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. 14,28,587/- actually represented income in respect of which inaccurate particulars had been furnished by the appellant. In the case of CIT vs. Sangrur Vanaspati Mills Ltd, the Hon'ble High Court held as under:

"6. We have heard counsel for the appellant and have gone through the impugned order.

7. The order passed by the ITAT is based upon two decisions of this Court in CIT v. Pa vail Singh & Co. [2002] 254 ITR 191 and Hori Gopol Singh v. CIT [2002] 258 ITR 85. In both these decisions, this Court has held that in order to attract clause (c) of section 271(1) of the Act, it is necessary that there must be concealment by the assessee of the particulars of his income or furnishing of inaccurate particulars of such income. The provisions of section 271(1)(c) of the Act are not attracted to cases where the income of an assessee is assessed on estimate basis and additions are made therein. It was held that when the addition had been made on the basis of estimate and not on account of any concrete evidence of concealment, then the penalty was not leviable. The similar view was also take;' by this Court in CIT v. Dhillon Rice Mills [2002] 256



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ITR 447, where the addition was made by the Assessing Officer by estimating the yield of super phak as well as of chhilka and also the price of chhilka, that addition was reduced by the CIT(A). However, the penalty levied by the Assessing Officer was deleted by the CIT(A). The order of CIT(A) was confirmed by the ITAT and the appeal filed by the assessee against the said order of the ITAT was dismissed by this Court, on the ground that the Assessing Officer had made the additions on the basis of estimate of the yield of phak and estimate of the price and that the estimate facts lead to penalty.

8. In view of the aforesaid factual and legal position, we are of the opinion that no substantial question of law is arising from the order passed by the ITAT."

5.3 I also find that the facts in the case of Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H) mentioned in the order of the Hon'ble High Court are 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)(e) 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 Hon'ble 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 estimates in assessing the income of the assessee, it cannot be said that the assessee concealed his income.

Additions in his income were made, as already observed on estimate basis and that by itself does not lead to the conclusion that the assessee either concealed 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



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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."

5.4 In view of the decisions discussed above, the penalty imposed in respect of the estimated addition of Rs.14,28,587/- is not sustainable."

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of decision in the case of **CIT Vs. Sanrur Vanaspati Mills Ltd. (303 ITR 83) (P & H)** and **CIT Vs. M. M. Rice Mills 253 ITR 17** and the decision of Hon'ble Gujarat High Court in the case of **CIT vs. Simit P. Sheth 356 ITR 451**. 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. Taking into account of 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 at this appellate stage.

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

Order pronounced in the open court on 01/07/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/07/2021

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**