

आयकर अपीलिय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 5629/Mum/2019

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 5630/Mum/2019

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 5631/Mum/2019

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax officer, Ward 25(3)(4), Room No. 236, 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	बनाम/ Vs.	Sunil Babulal Doshi, 10, Hari Vijay Society, Bhagat Singh Road, Vile Parle (W), Mumbai-400 056
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AGGPD4879C		

अपीलार्थी की ओर से/ Appellant by	:	Shri T.S. Khalsa, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Vimal Punmiya, AR

सुनवाई की तारीख / Date of hearing:	14.06.2021
घोषणा की तारीख / Date of pronouncement:	31.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of Revenue are arising out of the common order of the Commissioner of Income Tax (Appeals)-37, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-37/IT-27/ITO-25(3)(4)/2018-09, CIT(A)-

37/IT-28/ITO-25(3)(4)/2018-09, CIT(A)-37/IT-29/ITO-25(3)(4), 2018-19 dated 14.06.2019. The re-assessments for all the Assessment Years were framed under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') vide even dated 21.03.2014. The penalties for all the Assessment Years were levied by ITO Ward 25(3)(4), Mumbai vide order dated 28.03.2018.

2. The only common issue in these three appeals of Revenue is against the order of CIT(A) deleting the levy of penalty on estimated income in regard to estimation of profit on bogus purchases. For this, Revenue has raised the identically worded grounds in all the three years and the quantum involved in ITA No.5629/Mum/2019 of ₹72,606/-, in ITA No. 5630/Mum/2019 of ₹5,16,675/- and in ITA No. 5631/Mum/2019 of ₹2,40,607/-.

3. The facts and circumstances are also identical in all these three years. Hence, we will take up the facts from ITA No.5629/Mum/2019 for AY 2009-10 and decide the issue. The relevant ground raised in Assessment Year 2009-10 reads as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the I.T. Act, 1961 to the tune of ₹72,606/- relevant to quantum addition made by the Assessing Officer and Ld. CIT(A) failed to appreciate the fact that the quantum addition made by the Assessing Officer is squarely covered under the exception mentioned in para 10 of CBDT circular

No.03/2018 dated 11.07.2018 and its amendment dated 20.08.2018.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to consider the fact that the quantum addition for the year under consideration was based on the information received from DGIT (Inv.), Mumbai that the Hawala Dealers had confirmed on oath before the Sales Tax Department that purchases made by the assessee were without supplying the goods, hence the penalty levied on the quantum addition for the year under consideration stands justified."

4. The Brief facts are that the assessee has filed the return of income for the Assessment Years 2009-10, 2010-11 & 2011-12 declaring total income of ₹ 2,39,620, ₹5,81,540/- and ₹7,88,842/- which were assessed at ₹53,35,660/- ₹ 2,93,11,510 and ₹3,97,22170/- respectively. The Assessing Officer made total disallowance for bogus purchases at the rate of 100% of the bogus purchases. Aggrieved preferred the appeal before CIT(A), who partly confirmed the appeal by reducing the disallowance at the rate of 12.5% of the bogus purchases by observing as under:-

"I have perused the available material on the issue and also gone through the various cases cited by the counsel of the assessee and the ratios of which further substantiate the settled legal position pertaining to levy of penalty is outlined below: (a) The penalty

proceedings are independent of assessment proceedings. Before levy of penalty under Section 271(1)(c), the AO has to establish that there was concealment or furnishing of inaccurate particulars of income on the part of the assessee. (b) It is necessary to establish conscious concealment for levy of penalty under Section 271(1)(c); (c) Penalty cannot be levied simply because addition is sustained in quantum proceedings. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false, does not necessarily give rise to the inference that the disputed amount represents income of the assessee. (d) Before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and the assessee and has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars; (e) If the books of account of the assessee are rejected and trading addition is sustained by estimating net profit, it cannot be presumed that the assessee has concealed income so as to attract the provisions of Section 271(1)(c). It is observed that the impugned addition was made by the AO only because of lack of evidence to establish the purchase. The addition has been made in this case merely on account of the assessee failure to establish the identity of the supplier. As such considering all the

facts and circumstances of the case, in entirety, and the well-settled position of law arising out of the decisions cited above, I am of the opinion that the disputed amount cannot be considered as assessee's concealed income so as to attract the provisions of Section 271(1)(c). Accordingly, the impugned order of the AO levying the penalty is cancelled and this ground is allowed."

5. However, the Hon'ble ITAT, Mumbai reduced the addition to the extent of 4.61%, 5.82% and 2% for the Assessment Year 2009-10, 2010-11 and 2011-12 respectively. Further, the Assessing Officer levied the penalty u/2 271(1)(c) on 23.03.2018, for which the assessee is in appeal before us.

6. After hearing both the sides, we noted that the CIT(A) has deleted the penalty for all the Assessment Years by observing as under:-

"I have the available material on the issue and also gone through the various cases cited by the counsel of the assessee and the ratios of which further substantiate the settled legal position pertaining to levy of penalty is outlined below:

(a) The penalty proceedings are independent of assessment proceedings. Before levy of penalty order under Section 271(1)(c), the Assessing Officer has to establish that there was concealment or furnishing of inaccurate particulars of income on the part of the assessee.

(b) *It is necessary to establish conscious concealment for levy of penalty under Section 271(1)(c).*

(C) *Penalty cannot be levied simply because addition is sustained in quantum proceedings. It would be perfectly legitimate give rise to the inference that the disputed amount represents income of the assessee.*

(d) *Before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and the assessee and has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars;*

(e) *If the books of account of the assessee are rejected and trading addition is sustained by estimating net profit, it cannot be presumed that the assessee has concealed income so as to attract the provisions of Section 271(1)(c).*

It is observed that the impugned addition was made by the Assessing Officer only because of lack of evidence to establish the purchase. The addition has been made in this case merely on account of the assessee's failure to establish the identity of the supplier. As such considering all the facts and circumstances of the case, in entirety, and the well-

settled position of law arising out of the decisions cited above, I am of the opinion that the disputed amount cannot be considered as assessee's concealed income so as to attract the provisions of Section 271(1)(c). Accordingly, the impugned order of the Assessing Officer levying the penalty is cancelled and this ground is allowed."

7. When this was confronted to the learned Sr. DR, he could not controvert the findings of CIT(A) deleting the penalty for all the Assessment Years. Even before us now, the learned Sr. DR could not point out any concealment of income or furnishing of inaccurate particulars of income, hence, we find no infirmity in the order of CIT(A) for all these Assessment Years. All the three appeals of Revenue are dismissed.

8. In the result, All the appeals of Revenue are dismissed.

Order pronounced in the open court on 31.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



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/Asstt. Registrar/ व. निजी सचिव/Sr. Private Secretary/
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai