

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

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.07/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2010-11)

ACIT-32(2) 720, 7 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, BKC, Bandra (E), Mumbai-400051.	बनाम/ Vs.	Mangal Singh M. Rathore B-1, Neela Apt, SVP Road, Borivali (W), Mumbai- 400092.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIPR6967M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Ms. Usha Gaikwad (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 14/07/2021

घोषणा की तारीख /Date of Pronouncement: 03/09/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 31.10.2019 passed by the Commissioner of Income Tax (Appeals) -44 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11 in which the penalty levied by AO has been order to be deleted.

2. The revenue has raised the following grounds: -

" 1. On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.10,51,123/- without appreciating the facts that the assessee claimed bogus purchases in its return of income thereby making himself liable for penalty u/s 271(1)(c) of the Income Tax Act, 1961.



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2. *On the facts and in the 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 Circular No.17/2019 dated 08.08.2019 r.w. 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€ of the said Circular 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 appeal prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.*

4. *The appellant craves leave to amend or alter any ground 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 12.10.2010 declaring a total income to the tune of Rs.1,22,99,431/- for the A.Y.2010-11. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The case of the assessee was reopened on the basis of the information received from the Sales Tax Department, Maharashtra in which it was conveyed that the assessee has taken the bogus purchase entry of Rs.28,029,936/- from the following parties.:-

VAT	Name of the Party	Amount
27140326567V	Saraogi Syndicate	11771134
27930114236V	Karan Enterprises	2766877
27370565400V	Sunrise Enterprises	846893
27340553631V	Shruti Sales Corporation	2552432
27310642839V	Mital Enterprise	384517
27190661917V	Madhav Trading Co.	1670776



27030265566V	Amar Enterprises	1010582
27540680106V	Anshu Mercantile Pvt. Ltd.	1129675
27450680107V	Dhiren Mercantile Pvt. Ltd.	1247408
27770112384V	Nimesh Trading Co.	2887819
2700557604V	Rakesh Enterprises	2765624
27300350341V	Shakti Trading Co	2666219
27330145897V	Shreeji Enterprises	1249862
27840584105V	Tisha Enterprises	2774118
	Total	28029936

The notice was given and after the reply of the assessee, the AO raised the addition to the extent of Rs. 28,029,936/- i.e 100% of bogus purchase. The income of the assessee was assessed to the tune of Rs.4,55,72,900/-. The penalty proceeding was initiated. The notice was given and after the reply of the assessee, the AO levied the penalty to the tune of Rs.10,51,123/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, the revenue has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The present case is in connection with the 100% addition on account of bogus purchase which was restricted to the extent of 12.5% in appeal before the CIT(A). Subsequently, the penalty was initiated and AO levied the penalty to the tune of Rs.10,51,123/- which was deleted by CIT(A) in view of the order dated 31.10.2019 under challenged. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“6.4.1 I have considered the submissions of the appellant and perused the materials available on record The appellant has requested to delete



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the impugned penalty levied u/s 271(1)(c) of the Act at Rs.10,51,123/-
The main contentions of the appellant are that it has neither concealed particulars of income nor furnished inaccurate particulars of income mere rejection of appellants claim would not automatically lead to levy of penalty and it had submitted necessary evidences in support of its claim, but the same was not accepted by the Ld AO and where the addition has been made or sustained on estimation basis the penalty u/s 271(1)(c) of the Act is not leviable In support of its claim the appellant has placed reliance on various judicial precedents as detailed above. The contentions of the appellant have been considered carefully The Ld AO had made the addition on account of bogus purchases at Rs 280,29,936/- The Ld CIT(A) had allowed the appeal of The appellant on this issue However, the Hon'ble ITAT has held that the profit element involved in such purchases may be estimated @ 12.5% and hence restricted the addition @ 12.5% of such bogus/suspicious purchases The facts of the case suggest that The Ld AO had made said addition on the ground that the appellant could not prove the purchases under consideration from [the parties concerned. It is also an admitted fact that the Ld. CIT(A) had allowed the appeal on this issue and the Hon'ble ITAT has restricted said addition to 12.5% on estima red/ad-hoc basis in the case of M/s Earthmoving Equipment Service Corporation in ITA No. 6617/2014 and Hon'ble ITAT Mumbai vide its order dated 02.05.2017 has deleted the penalty levied u/s 271(1)(c) of the Act, where the addition u/s 69C of The Act was made on account of bogus purchases, on the ground that the assessee made a claim which was bonafide and the same was coupled with documentary evidences but the same remained inconclusive for want of confirmation from The suppliers as they could not be traced at given address Further the Hon'ble ITAT Mumbai in the case of Ajay Loknath Lohia in ITA No. 2998/Mum/2017. vide its order dated 05.10.2018 has deleted the penalty levied u/s 271(1)(c) of the Act. on The disallowance/add-on made @25% on



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alleged bogus purchases made from hawala dealers based on the information received from the Sales Tax Department and where the appellant had accepted such estimated addition, after holding that though the AO had estimated 25% gross profit on alleged bogus purchases never made any observations with regard to the incorrectness in details filed by the assesses to prove such purchases

6.4.2 From The above it is evident that the facts and circumstances of the present case are similar as to the facts adjudicated by The Hon'ble ITAT Mumbai in above referred cases Respectfully following the same, I am of the considered opinion that This is not a fit case to levy penalty u/s 271(1)(c) of the Act. Hence, the impugned penalty levied u/s 271(1)(c) at Rs.10,51,123/- DELETED, Accordingly, the Ground No 1 raised in appeal is ALLOWED.”

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has relied upon the decision of the Hon'ble ITAT in the case of **M/s. Earthmoving Equipment Service Corporation in ITA. No.6617/2014 & in the case of Ajay Loknath Lohia in ITA. No.2998/Mum/2017.** Undoubtedly, it is specifically held that no penalty is liable to be sustainable where the profit was estimated on the estimation basis. The Hon'ble Punjab & Haryana High Court in the case of **Harigopal Singh Vs. CIT (2002) 258 ITR 85 (P & H), CIT vs. Aero Traders Pvt. Ltd., 322 ITR 316 (Del) & CIT Vs. Subhash Trading Co., 221 ITR 110 (Guj.)** Taking into account of all the facts and circumstances of the case, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we upheld the finding of the CIT(A) on this issue and dismiss the appeal of the revenue.



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

Order pronounced in the open court on 03/09/2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/09/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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