

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 1411 & 1412/Mum/2020  
(A.Ys: 2010-11 & 2009-10)

ACIT – 32(1) Room No. 702, 7 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai – 400051.	Vs.	Shri Vasant Vallabhdas Sangani 303, Raj Kapadia Complex, 56 <sup>th</sup> Road, TPS III, Borivali (W), Mumbai – 400 092.
PAN/GIR No. : AAZPS4590E		
Appellant	..	Respondent

Appellant by :	Shri S.N. Kabra, DR
Respondent by :	None

Date of Hearing	15.09.2021
Date of Pronouncement	17.09.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

These are the two appeals filed by the Revenue against the separate orders of the Commissioner of Income Tax (Appeals) -44 Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961.

The issues in both the appeals are common and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall

take up the ITA No. 1412/M/2020 for the A.Y 2009-10 as a lead case and facts narrated. The Revenue has raised the following grounds of appeal:

1. *"On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied by the AD u/s. 271(1)(c) of the Income Tax Act, 1961, of Rs. 1,30,000/-without appreciating the facts that the Assessing officer has correctly held that the assessee has failed to substantiate the transactions claimed in its return of income thereby evade taxes to that extent."*
2. *"On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the act of assessee clearly falls within the ambit of provisions of Explanation-1 to Section 271(1)(c) of the Act as the assessee had failed to offer an explanation or which was found by the A.O. to be false."*
3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by A.O. u/s 271(i)(c) of the I. T. Act, 1961 of Rs. 1,30,000/-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 I.T. Act, 1961."*
4. *"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 08.08.20 19 r.w. Circular No. 3/2018 dtd 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) 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."*
5. *"The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

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

2. The Brief facts of the case are that, the assessee is engaged in the business of trading in chemicals. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 declaring a total income of Rs. 16,62,600/- and the return of income was processed u/s 143(1) of the Act. The Assessing Officer (A.O.) has received information from DGIT (Inv) Mumbai that as per the Maharashtra Sales Tax Department, the assessee has obtained the bogus purchase bills from four parties who are engaged in providing the accommodation bills aggregating to Rs. 50,24,786/-. The A.O. has reason to believe that there is a income escaping the assessment and issued notice u/s 148 of the Act. The assessee has filed a letter on 15.03.2016 to treat the return of income filed on 30.09.2009 as due compliance. The assessee was provided reasons for reopening of the assessment and subsequently notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the requisite details and

produced the records for verification and the case was discussed.

3. The A.O on perusal of the financial statements found that the assessee has made purchases from four parties and the contentions of the assessee are that these are genuine purchases. Hence to test check the genuineness of the purchases, the A.O. has issued notice u/s 133(6) of the Act on the parties for furnishing the details and to produce the records for verification. But the notices were returned un-served by the postal authorities with remarks "left" and there was no compliance. Therefore, the assessee was issued show cause notice on 02.12.2016 to produce the details referred at Para 4.1 of the order. The assessee has submitted the details supporting the purchases i.e ledger, bills, bank statements etc. Whereas the A.O has dealt on the facts, evidence, judicial decisions and the percentage of gross profit ratio on sales. Finally, the A.O. relied on the Hon'ble High Court decisions and estimated the profit element of bogus purchases @ 8% and worked out the addition of Rs. 4,01,983/- and assessed the total

income of Rs. 20,64,580/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 28-12-2016.

4. Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act. The A.O. found that the assessee has failed to prove the genuineness of the transactions. The A.O. has provided opportunity to submit explanations. The A.O. was not satisfied with the reply of the assessee and relied on the findings in the scrutiny Assessment that the assessee has indulged in obtaining the bogus purchase bills and the A.O. has levied a penalty of Rs.1,30,000/- and passed order u/s 271(1)(c) of the Act dated 27.06.2017.

5. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A), the CIT(A) considered the grounds of appeal, findings of the A.O and the submissions of the assessee and observed that the A.O has made addition of 8% bogus purchases in the scrutiny assessment U/sec143(3) r.w.s Sec147 of the Act. Whereas the A.O has levied the penalty u/sec 271(1)(c) of the Act on estimated income in the penalty proceedings. The CIT(A) dealt on the

provisions of Sec. 271(1)(c) of the Act and relied on the Coordinate Bench of Hon'ble Tribunal and the Hon'ble High Court decisions and observed that no penalty can be levied on estimated income and directed the A.O to delete the penalty and allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Hon'ble Tribunal.

6. At the time of hearing, none appeared on behalf of the assessee. Contra, the Ld. DR submitted that the CIT(A) erred in deleting the penalty, whereas the A.O has received the information that, the assessee has obtained bogus purchase bills and the same could not be overlooked and prayed for allowing the revenue appeal.

7. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has erred in deleting the penalty overlooking the transactions of bogus purchases. Whereas, the Ld.CIT(A) considering the facts and circumstances observed that the penalty cannot be levied on

estimated income. We find that the A.O. has estimated income/gross profit @ 8% on bogus purchases. We are of the opinion that when the addition is on estimated basis, penalty u/s 271(1)(c) of the Act cannot be levied on such adhoc estimated income. The disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act. The A.O. has not doubted the sales and made 8% disallowance of bogus purchases and we rely on the ratio of the Honorable Jurisdictional High Court in the case of M/s Nikunj Eximp Enterprises Vs Cit (W.P.No 2860 dated 18-06-2014). Further the assessing officer made an addition based on the information received from Sales tax department Maharashtra. We are of the opinion that once the revenue accepts that penalty is levied on the basis of information from the outside agency/department, the penalty is not sustained. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent evidences or information. Accordingly, we are not inclined to interfere with the

order of the Ld.CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue .

**ITA.No. 1411/Mum/2020, A.Y 2010-11**

8. As the facts and circumstances in this appeal is identical to ITA No. 1412/Mum/2020 for the A.Y.2009-10 except the figures. Therefore, the decision rendered in above paragraphs would apply mutatis mutandis for this appeal also. Accordingly, grounds of appeal of the revenue are dismissed

9. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 17.09.2021

Sd/-  
(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 17.09.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai