

**आयकर अपीलीय अधिकरण “F” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

**आयकर अपील सं./ ITA No. 703/Mum/2020**  
(निर्धारण वर्ष / Assessment Year 2009-10)

Income Tax Officer, Ward-22(1)(4), 308, 3 <sup>rd</sup> Floor, Piramal Chambers, Lal Baug Parel, Mumbai-400 012	Vs.	Shri Felix Francis D'souza 37, Ground Floor, Swastik Industrial Estate, 178, CST Road, Kalina, Santacruz (E), Mumbai-400 098
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AEDPD1467K</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Ms. Usha Gaikwad, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	None

सुनवाई की तारीख / <b>Date of hearing:</b>	12.08.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	17.09.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /  
**PER MAHAVIR SINGH, VP:**

This appeal of Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-32, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-32, Mumbai/10272/2017-18 vide order dated 11.11.2019. The Assessment was framed by the Income Tax Officer, Ward-22(1)(4) Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide order dated 13.03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act'). The penalty was levied by ITO, ward-22(1)(4) vide order dated nil under section 271(1)(c) of the Act.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the penalty levied by AO under section



271(1)(c) of the Act for furnishing of inaccurate particulars of income in respect of bogus purchases. For this, Revenue has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the penalty of ₹3,70,250/- levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), 1961 on the issue of bogus purchases without appreciating the facts that the sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchase and thus the assessee was one of the beneficiary of accepting accommodation entries for the purchases.*

*2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty of ₹3,70,250/- levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), 1961 on the issue of bogus purchases without appreciating the facts that the assessee was found guilty of taking accommodation entries in the form of bogus purchases from the parties*



*declared as hawala traders involved in providing accommodation entries of purchases when there was no actual purchase and delivery of goods by the sellers as deposed by the sellers in their sworn statements before the Sales Tax Department."*

3. Briefly stated facts are that the AO received information from the investigation wing of the department, who in turn received information Maharashtra Sales Tax Department about the entry provider who are engaged in issuing accommodation bills to various beneficiaries but not supplying any material actually. The assessee is one of the beneficiary and has inflated its purchases by obtaining bogus bills to the extent of ₹72,61,935/-. The AO estimated the profit at the rate of 15% of the bogus purchase and made addition of ₹10,89,290/- to the income of the assessee. The AO initiated the penalty proceedings under section 271(1)(c) of the Act and levied the penalty for furnishing of inaccurate particulars of income amounting to ₹3,70,250/-. Aggrieved, assessee preferred the appeal before CIT(A), who deleted the penalty on merits by observing as under: -

*"4.4 The A.O has mentioned in the penalty order that penalty proceedings u/s. 271(1)(c) r.w.s. 274 of the Act were initiated on only the issue of additions made on suppressed profits of Rs. 10,89,290/- and has held in the penalty order that the assessee has concealed the taxable income as well as furnished inaccurate particulars to the tune of Rs. 10,89,290/-. Thus, the A.O has levied the penalty in respect of the addition of Rs.*



10,89,290/-. However, while the computing the tax sought to be evaded the A.O has considered the total income determined at Rs.18,28,360/- which includes the addition on account of disallowance u/s. 14A of Rs. 18,247/-. From the assessment order, it is seen that the appellant has earned dividend income of Rs. 1425/- which is claimed as exempt The A.O was not satisfied with the claim of the appellant that no expenditure was incurred for earning the said income and a disallowance of Rs. 18,247/- was made u/s. 14A r.w Rule 8D. However, the A.O has not recorded any separate satisfaction for initiating penalty in respect of the said addition as per par 13.3 of the assessment order and the A.O has levied the penalty only in respect of the addition of ₹ 10,89,290/-. Thus, levy of penalty in respect of the addition on account of disallowance u/s. 14A, while computing the quantum of penalty is not found to be correct. In this regard, I also find that the said addition is oil of a disputed legal claim and penalty is not justified in view of the following decision, since the claim of expense itself is not found to be incorrect:

1. *CIT v. Reliance Petroproducts (P.) Ltd.* (2010) 322 ITR 158/189 Taxman 322 (SC).

4.5 In view of above discussion, the levy of penalty of Rs. 370,250/- u/s. 271 of the Act is not found to be justified and is hereby cancelled.”

Aggrieved, Revenue came in appeal before Tribunal.

4. We have heard the learned Sr. DR. There is none from present from the assessee's side. We have gone through the facts and circumstances of the case and noted that the assessee before AO submitted bank statements duly reflecting payment made by account payee cheques. But these were not



disapproved by Assessing Officer. We noted that the CIT(A) exactly on the same finding deleted the penalty that this is merely estimated addition by estimating the bogus purchases and applying the profit rate at 15% of the bogus purchase. We noted that this issue is squarely covered by this Tribunal's decision in ITA No. 6881/Mum/2018 vide order dated 17.12.2019, wherein it is held as under: -

*"4. I have heard the learned Sr. Departmental Representative. There is none present from the assessee's side. I have gone through the facts and circumstances of the case and noted that the assessee before AO submitted various evidences like ledger account of the purchasers, copies of invoices, delivery challans, bank statements duly reflecting payment made by account payee cheques etc. But these were not disapproved by Assessing Officer. I noted that the CIT(A) exactly on the same finding deleted the penalty that this is merely estimated addition by estimating the bogus purchases and applying the profit rate at 12.5% of the bogus purchase. I noted that this issue is squarely covered in ITA No. 1727/Mum/2018 vide order dated 16.05.2019, wherein it is held as under: -*

*"3. Upon careful consideration, upon perusal of assessee's submissions during appellate proceedings, we find that the assessee's plea revolve around the fact that the purchases were made under bona-fide belief and in good faith that the suppliers were genuine. The suppliers used to visit assessee's shop to supply the material as per routine practice. The TIN of the suppliers was found active at the time of purchase of goods. We find the explanation to be plausible one and the overall conduct of the assessee do not*



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Shri Felix Francis D'Souza; AY 09-10

*inspire us to confirm the penalty. By deleting the same, we allow ground nos. 1 & 2. ....*

*5. As the issue is covered, I find that no infirmity in the order of CIT(A) deleting the penalty. Hence, I confirm deletion of the penalty and confirm the order of CIT(A)."*

5. As the issue is squarely covered, we find that no infirmity in the order of CIT(A) deleting the penalty. Hence, we confirm the order of CIT(A).

**6. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 17.09.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 17.09.2021.

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

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

**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)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai