

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.1288/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Shantilal J. Sanghavi Shop No. 17, Basement 25C, Sonarika Bldg, Nanubhai Desai Road C. P. Tank, Mumbai-400 004	बनाम/ Vs.	ITO – 17(3)(3) R. No.111A, Aaykar Bhavan M. K. Marg, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AQNPS-6168-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Dhawal Shah– Ld. AR
Revenue by	:	Shri V. Vinod Kumar– Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05/10/2021
घोषणा की तारीख / Date of Pronouncement	:	05/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2009-10 arises out of the order of Ld. Commissioner of Income-Tax (Appeals)-28, Mumbai [CIT(A)] dated 08/07/2019 which has confirmed the penalty of Rs.74,800/- u/s 271(1)(c) as levied by Ld. AO vide penalty order dated 21/03/2018. The Ld. AR submitted that penalty is not sustainable since the additions are estimated additions. The Ld. Sr. DR, on the other hand, justified the penalty on the facts of the case.

2. Facts leading to imposition of penalty are that in an assessment framed u/s 143(3) r.w.s. 147 on 27/02/2015, the assessee was saddled with addition of alleged bogus purchases for Rs.24.64 Lacs. Upon further appeal, the quantum was estimated @10.12% of Rs.24.64 Lacs. Consequently, penalty of Rs.74,800/- was imposed. The penalty, upon confirmation in first appellate order, is in further challenge before us.

3. In our considered opinion, the penalty is not sustainable since the additions are mere estimated additions of unproved purchases and therefore, no case of concealment of income or furnishing of inaccurate particulars of income could be made out against the assessee. The same is evident from the fact that the assessee had furnished purchase invoices, delivery challans and corresponding sales bills in support of the suspicious purchases. Our aforesaid view is duly supported by the order of Hon'ble Chhattisgarh High Court in **CIT V/s Vijay Kumar Jain (325 ITR 378; 19/04/2010)**. Therefore, we are inclined to delete the impugned penalty.

4. Resultantly, the appeal stand allowed.

Order pronounced in open court on 05th October, 2021.

Sd/-

Sd/-

(Vikas Awasthy)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/10/2021

Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.