

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ I.T.A. No.106/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT – 32(1) R. No. 702, 7 th floor Kautilya Bhavan Bandra Kurla Complex, Bandra(East), Mumbai-51	बनाम/ Vs.	Shri Vijay Bhogilal Shah, B-1203, Pratap Heritage, L T. Road Borivali (E), Mumbai-400 092
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AKGPS-2700-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri S. N. Kabra- Ld. Sr. DR
Assessee by	:	None

सुनवाई की तारीख/ Date of Hearing	:	25/10/2021
घोषणा की तारीख / Date of Pronouncement	:	25/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 arises out of the order of Ld. Commissioner of Income-Tax (Appeals)-44, Mumbai [CIT(A)] dated 31/08/2020 which has deleted the penalty of Rs.7.99 Lacs u/s 271(1)(c) as levied by Ld. AO vide penalty order dated 27/03/2018. At the time of hearing, none appeared for assessee. The Ld. DR, on the other hand, pleaded for restoration of penalty.

2. Facts leading to imposition of penalty are that in an assessment framed u/s 143(3) r.w.s. 147 on 26/02/2015, the assessee was saddled with addition of alleged bogus purchases on estimated basis at the rate of 12.5% which was confirmed by Ld. CIT(A). Consequently, penalty of Rs.7.99 Lacs was imposed by Ld. AO vide order dated 27/03/2018. However, upon further appeal, Ld. CIT(A) deleted the penalty, inter-alia, on the ground that the additions were estimated additions and Ld AO conclusively failed to establish that the purchases were bogus. The Ld. AO could not prove furnishing of inaccurate particulars of income or concealment of income and therefore, penalty on estimated additions would not be sustainable in terms of decision of Hon'ble Punjab & Haryana High Court in **Harigopal Singh V/s CIT (258 ITR 85)**. Finally, the penalty was deleted which is in further appeal 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. 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)** as well as the cited decision of Hon'ble Punjab & Haryana High Court. Therefore, we do not find any reason to interfere in the impugned order.

4. Resultantly, the appeal stand dismissed.

Order pronounced on 25th October, 2021.

**Sd/-
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/10/2021
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.