

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 6738/MUM/2019  
Assessment Year: 2010-11**

Clonto Lobo,  
21, Shreepal Services Industrial  
Estate, Pavanbaug, Chincoli, Malad,  
West, Mumbai-400064.

**Vs.** Income Tax Officer, Range  
30(1)(2),  
R. No. 505, C-13, 5<sup>th</sup> floor,  
Pratyakshkar Bhavan, Bandra  
Kurla Complex, Bhandra East,  
Mumbai-400051.

**PAN No. AABPL 6175 E  
Appellant**

**Respondent**

Assessee by : Mr. Sandesh Desai, AR  
Revenue by : Ms. Shreekala Pardeshi, DR

Date of Hearing : 24/08/2021  
Date of pronouncement : 26/10/2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-41, Mumbai [in short 'CIT(A)'] for the assessment year 2010-11 dated 25.02.2018 and arises out of assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

2. Brief facts of the case are, the assessee is filed return of income on 27.09.2010 declaring his income at ₹7,99614/-. During the assessment proceedings as per the information received from DGIT (Inv.), Mumbai in vide

letter dated 26.12.2013 that assessee has received accommodation entries from the hawala dealers and those hawala dealers had admitted to have issued details/invoices to various parties without actual delivery of goods. Based on the information, the assessee has received alleged bogus purchases of ₹5,30,914/- from three dealers. Accordingly, the assessment was completed by making addition of ₹95,820/- being 18.86% of the impugned purchases.

3. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) sustained and also enhanced the addition to the extent of 100% of the alleged bogus purchases. Accordingly, the Assessing Officer initiated the penalty proceedings by issue of notices u/s 274 r.w.s. 271(1)(c) dated 22.08.2019. After considering the submissions of the assessee, the Assessing Officer levied the penalty of ₹1,23,909/- being 100% of the tax sought to be evaded u/s 271(1)(c) of the Act.

4. Aggrieved, the assessee is in appeal, before us raising following grounds of appeal :

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in levying penalty u/s 271(1)(c) of the Act.*

2. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in levying penalty u/s 271(1)(c) without giving any reason or grounds.*

5. At the time of hearing, it is brought to our notice that the assessee filed appeal before the ITAT on the quantum addition and ITAT has passed the order vide ITA No. 2448/M/2019 dated 26.10.2020 restricting the estimated gross profit at 18.86% as per the assessment order. It was submitted that the penalty is levied initially based on the first appellate order and now that ITAT has restricted the addition made by the Assessing Officer. It is submitted that the

penalty is levied on the income which is based on estimation of gross profit. Therefore, the penalty cannot be levied on the estimated income.

6. On the other hand, the Ld. DR relied on the orders passed by the lower authorities.

7. Considered the rival submissions and material on record. We noticed that the income of the assessee is estimated based on the alleged bogus purchases and subsequently, the Ld. CIT(A) enhanced the addition to the extent of 100% of the bogus purchases and the co-ordinate Bench of this Tribunal set aside the order passed by the Ld. CIT(A) and restricted the estimated income determined by the Assessing Officer @ 18.86% of the alleged bogus purchases. Therefore, in essence, the addition made by the Assessing Officer is based on estimation of income and the Courts have upheld that the penalty cannot be levied on the estimated income. Therefore, the penalty levied by the AO is accordingly quashed and grounds raised by the assessee is hereby allowed.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 26/10/2021.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/10/2021

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.

3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**