

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 1357/मुं/2020 (नि.व.2011-12)
ITA NO.1357/MUM/2020 (A.Y.2011-12)

Karla Engine Components Ltd.
31, Golden Beach Co-op. Hsg. Soc.,
Rulya Park, Juhu,
Mumbai-400049.

PAN: **AACCK7849Q**

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT- 10(1)(2),
6th Floor, Room No. 623,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Ajay Singh

प्रतिवादी द्वारा/Respondent by : Sh. Ashish Heliwal

सुनवाई की तिथि/ Date of hearing : 26/08/2021

घोषणा की तिथि/ Date of pronouncement : 04/10/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 20.11.2019 for the Assessment Year (AY) 2011-12 confirming levy of

penalty under section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

2. Sh. Ajay Singh appearing on behalf of the assessee narrating the facts of the case submitted that the assessment for AY 2011-12 in the case of assessee was re-opened on the ground that the assessee has obtained bogus purchase bills aggregating to Rs. 1,20,20,320/- from two dealers i.e. Aradhana Corporation and Jay Traders, declared hawala operators by the Sales Tax Department, Government of Maharashtra. The Assessing Officer (AO) estimated disallowance of 15% of non-genuine purchases and initiated penalty proceedings under section 271(1)(c) of the Act in respect of said estimated addition. The AO vide order dated 26.06.2018 levied penalty of Rs. 5,57,150/- on the aforesaid addition. The assessee filed appeal before the CIT(A) against levy of penalty, but remained unsuccessful. Now, the assessee is in appeal before the Tribunal against levy of penalty on addition made on estimated basis. The Id. Counsel for the assessee submitted that no penalty could have been levied on estimated addition.

3. Per contra, Sh. Ashish Heliwal representing the Department vehemently defended the impugned order. The Id. DR submitted that the assessee has failed to discharge its onus in proving genuineness of the purchases. The addition made on account of bogus purchases has been accepted by the assessee, hence, penalty under section 271(1)(c) of the Act has rightly been levied by the AO on account of furnishing inaccurate particulars of income and the same has been confirmed by the CIT(A). The Id. DR prayed for upholding the impugned order and dismissing the appeal of assessee.

4. Both sides heard, orders of the authorities below examined. It is an undisputed fact that the addition in respect of bogus purchases had been made by the AO by making an adhoc disallowance of 15% on alleged bogus purchases. It is a well settled legal proposition that no penalty can be levied in respect of adhoc addition/additions made on estimated basis. For levy of penalty, the AO has to conclusively prove the quantum of suppressed income. The Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading & Rubber Industries reported as 360 ITR 580 has held that no penalty under section 271(1)(c) of the Act is leviable in respect of addition made on pure guesswork or estimations.

Similar view has been expressed by the Hon'ble Punjab & Haryana High Court in CIT vs. Sangrur Vanaspati Mills Ltd. (303 ITR 53). The Hon'ble High Court held that the proviso of section 271(1)(c) of the Act are not attracted to cases where the income of an assessee is assessed on estimate basis.

5. Thus, in view of facts of the case and the aforesaid decisions, I find merit in the contentions raised by assessee. The impugned order is quashed and the appeal of assessee is allowed.

Order pronounced in the open court on **Monday**, the **04th** day of October, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 04/10/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai