

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'A' BENCH, MUMBAI
[Coram: Pramod Kumar, Vice President, and,
Vikas Awasthy Judicial Member]**

ITA No.: 1166/Mum/2020
Assessment year: 2009-10

**The Deputy Commissioner of Income Tax- 9(1)(2)
Mumbai**

..... Appellant

Vs.

AR Rail Vikas Services Private Limited

.....Respondent

*311/331, A.R. House, RSC 48, Near Pragati College,
Gorai, Borivali (W), Mumbai 400091 [PAN: AAFCA1714P]*

Appearances:

Brajendra Kumar *for the appellant*

None *for the respondent*

Date of concluding the hearing : September 06, 2021
Date of pronouncing the order : September 15, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 29th November 2019, passed by the learned CIT(A) in the matter of penalty under section 271(1)(c) of the Income Tax Act 1961, for the assessment year 2009-10.

2. Grievances raised by the appellant are as follows:-

1) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty u/s. 271(1)(c) to the tune of Rs. 1,59,750/- without appreciating the fact that the Ld. CIT(A) has upheld the quantum addition joint account of bogus purchase?

2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the fact that the case falls within the purview of section 271(1)(c) of the I.T. Act, 1961?

3) Whether on the facts and in the circumstances of the case in law, the Ld. CIT(A) was justified in not appreciating the fact that Sales Tax Department, State

of Maharashtra in their independent enquiries have ascertained that the assessee has procured bogus purchase bills to the tune of Rs. 5,17,026/- from one M/s. Trimurti Enterprises with an intention to inflate its expense to suppress profit embedded thereto?

3. Learned representative fairly agree that the issue in appeal is now covered in favour of the assessee by a number of decisions of co-ordinate benches of this Tribunal. Learned Departmental Representative, nevertheless, relied upon the stand of the Assessing Officer and justified the impugned penalty of Rs. 1,59,750/-. Dealing with a materially similar situation, a co-ordinate bench of this Tribunal has observed as follows:-

1. In the case of Shri Ajay Loknath Lohia, I.T.A. No. 2998/Mum/2017 for the AY 2009-10 vide order dtd. 05/10/2018 the Hon'ble Income Tax Appellate Tribunal Mumbai Bench "A", Mumbai has held that

'Having heard both sides, we find merit in the arguments of the assessee for the reason that although the AO has estimated 25% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The AO never disbelieved information filed by the assessee, but he proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on ad hoc basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, we are of the considered view that mere ITA 2998/Mum/2017 disallowance of purchases on ad hoc basis does not tantamount to wilful furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961. Hence, we are of the considered view that the AO was erred in levying penalty u/s. 271(1)(c) of the Act. Accordingly we direct the AO to delete penalty levied u/s. 271(1)(c) of the Act.'

4. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench - which has also been reproduced by the learned CIT(A) in the impugned order. Respectfully following the same, we approve, the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

5. In the result, the appeals is dismissed. Pronounced in the open court today on the 15th day of September, 2021.

Sd/-
Vikas Awasthy
(Judicial Member)
Mumbai, dated the 15th day of September, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to:

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| <i>(1)</i> | <i>The appellant</i> | <i>(2)</i> | <i>The respondent</i> |
| <i>(3)</i> | <i>CIT</i> | <i>(4)</i> | <i>CIT(A)</i> |
| <i>(5)</i> | <i>DR</i> | <i>(6)</i> | <i>Guard File</i> |

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai