

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.1409/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2011-12)

Ganesh Vishnu Khanolkar 101, Sai Samman Co. Op. Soc, Plot No. 28-29, Union Park, Chembur, Mumbai- 400071.	बनाम/ Vs.	ACIT 26(1) C-11, Bldg, 701, 7 th Floor, Pratyakshakar Bhavan, BKC, Bandra (East), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADPK5024D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Ashok Patil	
Revenue by:	Shri T. S. Khalsa (DR)	

सुनवाई की तारीख / Date of Hearing: 22/09/2021
घोषणा की तारीख /Date of Pronouncement: 16/12/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 06.11.2019 passed by the Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

“1. Upholding the penalty levied by the teamed Assessing officer, being 100% of tax on the addition to income u/s 271(1)(e) of



the Income Tax Act, 1961 when the original addition has been made on conjecture and the suppliers are not bogus as alleged but have merely failed to pay the sales tax and accordingly mentioned as suspicious/hawala dealers by the sales tax department, then existence and the fact of sale has not been disproved.

2. *Upholding the penalty levied by the learned Assessing officer, being 100% of tax on the addition to income u/s 271(l)(c) of the Income Tax Act, 1961 when the copies of purchase invoices, corresponding sales invoices, quantitative details and proof of payment by account payee cheque for the purchase price have been provided and purchase has actually been made and is genuine.*

3. *Upholding the penalty levied by the learned Assessing officer, being 100% of tax on the addition to income u/s 271(l)(c) of the Income Tax Act, 1961 when in fact addition has been made on the basis of confession before sales tax officer and neither statement was recorded by the Assessing officer, nor copy of material relied upon furnished to appellant, nor opportunity given to the appellant to cross examine the panics who had made the confession statement, when the material has been used against the appellant.*

4. *Upholding the penalty levied by the learned Assessing officer, being 100% of tax on the addition to income u/s 271(1)(c) of the Income Tax Act, 1961 when in fact the addition is made on conjecture and no specific evidence has been filed to the effect that purchases are bogus /not genuine and very high pitched addition has been made exceeding double the profit margin which is erroneous.*



5. *Upholding the penalty levied by the learned Assessing officer, being 100% of tax on the addition to income u/s 271(1)(c) of the Income Tax Act,1961 when without giving proper opportunity when in fact the appellant could not reply as show cause notice for penalty was not received by the appellant.*

6. *The appellant craves leave to add, alter, amend, modify, insert or interpolate club or rectify to all or any of the said grounds of appeal at or before the hearing of the appeal."*

3. The brief facts of the case are that the assessee filed his return of income on 29.09.2011 declaring total income to the tune of Rs.32,78,879/-. The assessee is an individual and is engaged in the business of trading and dealership of Lubricating Oil and Greases under the trade name M/s. 'Ganesh Minerals. An information was received from the Maharashtra Sales Tax Department in which it was conveyed that the assessee has taken the bogus purchase entry in sum of Rs.86,25,759/- from the following three parties: -

S. No.	Name of the accommodation bill provider	TIN	Amount (in Rs.)
1	International Enterprises	27770240230V	10,65,001/-
2	Ronak Enterprises	27790692724V	34,57,126/-
3	Siddhivinayak Corporation	27180634908V	41,03,632/-
		Total	86,25,759/-

Thereafter, the notice was given and after the reply of the assessee, 25% of the said purchase was added to the income of the assessee. The penalty proceeding was initiated. After the reply of the assessee, the penalty in sum



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of Rs.3,50,000/- was levied. Feeling aggrieved, the assessee an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the Revenue and perused the record. We noticed that the AO has levied the penalty on account of raising the addition on the bogus purchase. The income was estimated and addition was raised. No penalty is leviable when the income has been estimated. In this regard, we find support of the decision of Hon'ble Punjab & Haryana High Court in the case of **Harigopal Singh Vs. CIT (2002) 258 ITR 85 (P & H)**. We also find support of the decision of the Hon'ble Gujarat High Court in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** in which it is specifically held that the penalty is not leviable when the profit was estimated on estimation basis. Taking into account all the facts and circumstances of the case, we are of the view that the finding of the CIT(Appeals) is not liable to be sustainable in the eyes of law. Accordingly, we set aside the finding of the CIT(A) on the issue and delete the penalty.

5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 16/12/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16/12/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**