

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

आयकर अपील सं/ I.T.A. No.470/Mum/2021  
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-26(1) Room No.623, 6 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	<b><u>बनाम/</u></b> Vs.	Vinodkumar S. Deora G/507, Sonmarg, S. V. Road, Malad (W), Mumbai- 400064.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPD4566E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri S. N. Kabra	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 16/11/2021  
घोषणा की तारीख /Date of Pronouncement: 16/12/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 27.02.2020 passed by the Commissioner of Income Tax (Appeals) -41 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

1 “On the facts and in the circumstances of the case and in law whether the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without appreciating that the penalty was levied on quantum addition made on account of bogus purchases wherein the onus was on the assessee to establish the genuineness of such



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*purchases by production of such parties before the assessing officer for examination or by furnishing other substantiating documents to prove the genuineness of the transaction and the assessee failed to discharge his onus.”*

2. *“On the facts and in the circumstances of the case and in law whether the Ld. CIT(A) was justified in deleting the penalty without appreciating the fact 2 that the Assessing Officer has levied penalty only after verifying the fact that the assessee evaded the taxes on the quantum addition made on account of bogus purchase.”*

3 *“The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.”*

4 *The appellant prays that the order passed by Ld. CIT(A) be set aside and that of the Assessing Officer be restored.*

5. *The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary.”*

3. The brief facts of the case are that the assessment u/s 143(3) of the Act was completed on 14.03.2013 determining the total income to the tune of Rs.94,11,740/- as against Rs.22,87,440/- declared by assessee in his return filed on 30.09.2010 on account of non-genuine purchases. Penalty proceeding was initiated. Subsequently, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of Rs.17,65,189/- providing the relief to the tune of Rs.52,95,567/-. Thereafter, the assessee preferred an appeal before the ITAT against the decision of the CIT(A), the AO initiated the penalty provision by issuance of notice. After the reply of the assessee, the penalty to the tune of Rs.5,50,000/- was levied. Feeling



aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, revenue has filed the present appeal before us.

#### **ISSUE NOS. 1 TO 5**

4. All the issues are in connection with the deletion of penalty by CIT(A) by virtue of order dated 27.02.2020 under challenge. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“I have gone through the submission of the appellant. As per the decision of (ITAT vide order No. ITA No.7723/Mum/2014 and 7251/Mum/2014 dated 06.10.2016 (Cross appeals, one by Revenue and the other by the assessee), with regard to the quantum appeal filed by the assessee against the assessment order u/s 143(3) dated 14.03.2013, the quantum appeal has been fully Allowed to the Appellant, hence, in my opinion, since the quantum appeal has been allowed by the ITAT, the penalty order passed by the A.O. on the basis of the issues raised in quantum appeal becomes infructuous. Therefore, the penalty order passed by the AO is Deleted and the Grounds of appeal raised are Allowed.”*

5. On appraisal of the above mentioned finding, we find that the CIT(A) has deleted the penalty on the basis of this fact that the Hon'ble ITAT in the appeal of the assessee as well as revenue bearing ITA. Nos. 7723/Mum/2014 and 7251/Mum/2014 dated 05.10.2016 deleted the addition. Since the quantum has been deleted, therefore, undoubtedly, no penalty is leviable. Accordingly, we find that the CIT(A) has rightly deleted the penalty and the order of the CIT(A) is nowhere required interfere with



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at this appellate stage. Accordingly, all the issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

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. P.S.)

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

**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