

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1997/M/2019  
Assessment Year: 2010-11**

Income Tax Officer, Ward 1(2), Thane, Room No.24, B-Wing, 6 <sup>th</sup> Floor, Ashar I.T. Park, Wagle Industrial Estate, Thane (West)- 400604  (Appellant)	Vs.	M/s. Mohammed Sajid Haroon Shaikh, ¾ Hajra Mansion, 2 <sup>nd</sup> Rabodi, Dr. Ansari Road, Thane (West) – 400 601 <b>PAN: ABQPS2517P</b>  (Respondent)
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**Present for:**

Assessee by : Shri Mohammed Sajid Haroon Shaikh  
Revenue by : Ms. Neha Thakur, D.R.

Date of Hearing : 05.01.2022  
Date of Pronouncement : 05.01.2022

**ORDER**

**Per Kuldip Singh, Judicial Member:**

Appellant Income Tax Officer, Ward 1(2), Thane (hereinafter referred to as the Revenue) by filing present appeal sought to set aside the impugned order dated 02.01.2019 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act (in short ‘the Act’) on the grounds inter alia that:-

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without properly appreciating the decisions of the Hon’ble Apex Court in the case of Mak Data Pvt. Ltd. Vs CIT ( Civil Appeal No. 9772 of 2013)”, the Hon’ble Gujarat High Court’s decision ; in the case of N. K. Proteins Ltd, Tax Appeal No. 242 of 2003 dated*

*20/06/2016 against which the SLP was dismissed by the Hon'ble Supreme Court and also ignoring the fact that Department received specific credible 'information in this case from the Sales Tax Department of the State Government of Maharashtra' in respect of non-genuine purchases.*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without appreciating the fact that there was a definite finding in the assessment order in respect of bogus purchases and of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.*

*3. It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11/07/2018 amended vide letter dated 20.08.2018 as per para 10(e) of the said circular, Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.*

*4. The appellant craves leave to add, amend, alter or delete any ground of appeal."*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of assessment framed under section 143(3) of the Act at the total income of Rs.8,06,166/- by way of making addition by estimating the gross profit of the assessee for the year under assessment @ 20.08% for alleged bogus purchases made by the assessee, the penalty proceedings have been initiated under section 271(1)(c) of the Act. Declining the contentions raised by the assessee the Assessing Officer (for short the AO) proceeded to levy the penalty to the tune of Rs.67,000/- @ 100% of the tax sought to be evaded.
3. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the penalty by allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

5. At the very outset, it is brought to the notice of the Bench that the issue raised by way of this appeal is covered in favour of the assessee in numerous decisions passed by the co-ordinate Bench of the Tribunal. On the other hand, the Ld. D.R. for the Revenue challenging the impugned order passed by the Ld. CIT(A) relied upon the penalty order passed by the AO and contended that when bogus purchase bills have been relied upon by the assessee he has furnished the inaccurate particulars.

6. Undisputedly, penalty in this case has been levied by the AO on the basis of alleged bogus purchases to the tune of Rs.10,79,789/- from various entry providers and proceeded to make the addition by estimating the gross profits of the assessee during the year under assessment @ 20.08%. The co-ordinate Bench of the Tribunal in identical facts and circumstances decided the identical issue i.e. to levy the penalty under section 271(1)(c) of the Act on the basis of quantum addition made on the basis of estimation and guess work by the AO in the case cited as Shri Ajay Loknath Lohia, I.T.A. No. 2998/Mum/2017 for the AY 2009-10 vide order dated 05.10.2018, wherein the issue has been decided as under:

*“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 the 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.”*

7. So in view of the matter and following the view taken by the coordinate Bench of the Tribunal, we are of the considered view that when the AO has merely proceeded to estimate the gross profit on the alleged bogus purchases on the basis of information received from Sales Tax Department, without applying his own mind qua the alleged bogus purchases the provisions contained under section 271(1)(c) of the Act are not attracted. In these circumstances, finding no illegality or perversity in the impugned order passed by the Ld. CIT(A) deleting the penalty levied by the AO under section 271(1)(c) of the Act, the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in the open court on 05.01.2022.**

**Sd/-  
(PRAMOD KUMAR)  
VICE PRESIDENT**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 05.01.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.