

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 1839 & 1840/MUM/2020
(A.Ys. 2009-10 & 2011-12)**

S.S. Metal & Alloys F/72, Eternity Mall L.B.S. Marg, Teen Hath Naka Thane (W), Mumbai – 400604 PAN: AA EFS7374M	v.	Income Tax Officer – 3(5) B-Wing, 6 th Floor Ashar I.T. Park Road No. 16Z Wagle Industrial Estate Thane, Mumbai – 400604
(Appellant)		(Respondent)

Assessee by	:	Shri Subodh Ratnaparkhi
Department by		Shri S.N. Kabra
Date of Hearing	:	28.01.2022
Date of Pronouncement	:	08.04.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-2, Thane [hereinafter in short "Ld.CIT(A)"] dated 09.09.2020 for the A.Ys., 2009-10 and 2011-12 in sustaining the penalty levied u/s. 271(1)(c) of the Act made by the Assessing Officer.

2. Briefly stated facts are that, assessee engaged in the business of trading in Iron and steel scrap filed return of income on 30.09.2009 and 30.09.2011 declaring income of ₹.7,35,521/- and ₹.9,51,552/- for the A.Y. 2009-10 and A.Y.2011-12 respectively. The returns were processed u/s.143(1) of the Act. Subsequently, assessments were reopened u/s.147 of the Act and completed the re-assessment on 31.01.2014 and 29.01.2014 u/s. 143(3) r.w.s 147 of the Act determining the income at ₹.74,52,372/- and ₹.1,77,67,026/- for the A.Y. 2009-10 and A.Y. 2011-12 respectively. While completing the reassessment the Assessing Officer treated purchases of ₹.65,87,051/- and ₹.1,68,15,478/- made from various dealers as non-genuine on the basis of the information received from Sales Tax Department, Mumbai that assessee has received accommodation entries from various dealers without making any purchases but made purchases only in gray market. The Assessing Officer treated such purchases as non-genuine as the assessee could not produce any parties in person before the Assessing Officer and failed to prove the genuineness of the purchases. On appeal before Ld.CIT(A), the Ld.CIT(A) sustained the addition made by the Assessing Officer. On further appeal by the assessee the ITAT Mumbai estimated the profit at 8% of the bogus purchases. Subsequently, Assessing Officer initiated penalty proceedings

and levied penalty of ₹.1,62,833/- and ₹.4,15,679/- u/s. 271(1)(c) of the Act, for the A.Y. 2009-10 and 2011-12 respectively, stating that the assessee has furnished inaccurate particulars of its income and concealed its income within the meaning of section 271(1)(c) r.w. Explanation 1 of the Act. On appeal the Ld.CIT(A) sustained the penalty made by the Assessing Officer. Against this order of the Ld.CIT(A), assessee is in appeal before us.

3. Ld. Counsel for the assessee submitted that the penalty cannot be imposed when the estimation is made on adhoc basis and requested to delete the penalty levied by the Assessing Officer.

4. Ld. DR vehemently argued and supported the orders of the Authorities below.

5. We have heard the rival submissions, perused the orders of the authorities below. It is a settled position of law that penalty cannot be levied when an adhoc estimation is made. In the instant case the Coordinate Bench of the Tribunal in ITA.No. 200 & 253/Mum/2016 dated 11.04.2018 for the A.Y. 2009-10 and 2011-12, on considering facts

restricted the disallowance @8% of the alleged bogus purchases for both the assessment years under consideration.

6. On identical situations the Coordinate Bench in the case of Shri Deepak Gogri *v.* Income Tax Officer in ITA.No. 1396/MUM/2017 dated 23.11.2017 held that no penalty is leviable observing as under: -

"6. We have heard the rival submissions, perused the orders of the authorities below. In so far as the penalty levied on estimation of profit element on purchases is concerned, we are of the view that Assessing Officer had made only adhoc estimation of profit on certain purchases treated as unexplained expenditure. Assessing Officer did not doubt the sales made by the assessee from out of such purchases. Assessing Officer based on the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [356 ITR 451] estimated the profit element in such purchases at 12.5% and by reducing the Gross Profit already declared by the assessee. In the circumstances, we hold that there is no concealment of income or furnishing of inaccurate particulars as the profit element was determined by way of adhoc estimation. Coming to the interest, the assessee furnished complete details in the return of income and made a claim and simply because the claim is denied and cannot lead to furnishing of inaccurate particulars or concealment of income. No allegation by Assessing Officer that the assessee failed to disclose the particulars relating to its claim in the return of income. Thus we hold that there is no concealment of income or furnishing of inaccurate particulars of income. Thus we direct the Assessing Officer to delete the penalty levied u/s. 271(1)(c) of the Act."

7. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT *v.* Aero Traders Pvt. Ltd., [322 ITR 316] wherein the Hon'ble High Court affirmed the order of the Tribunal in holding that estimated

rate of profit applied on the turnover of the assessee does not amount to concealment or furnishing inaccurate particulars.

8. In the case on hand the Coordinate Bench in quantum appeals estimated the Gross Profit on the alleged non-genuine purchases without there being any conclusive proof of concealment of income or furnishing inaccurate particulars of such income. Thus, respectfully following the above decisions, we direct the assessing officer to delete the penalty levied u/s.271(1)(c) of the Act for the both the Assessment Years under consideration.

9. In the net result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 08.04.2022.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

Mumbai / Dated 08/04/2022
Giridhar, Sr.PS

**Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum