

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एफ "  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
आअसं. 1989/मुं/2021(नि.व.2010-11)  
ITA NO. 1989/MUM/2021 (A.Y.2010-11)  
आअसं. 1988/मुं/2021(नि.व.2011-12)  
ITA NO. 1988/MUM/2021 (A.Y.2011-12)

The DCIT, Circle-1,Thane,  
Room No.22, B- Wing, 6<sup>th</sup> Floor,  
Ashar IT Park, Wagle Industrial Estate,  
Thane (W) – 400 604.

: अपीलार्थी/ **Appellant**

**बनाम/** Vs.

M/s. J.J.Enterprises,  
Shop No.12, Basement,  
TIP TOP Plaza, LBS Marg,  
Thane (W) -400 602.

PAN.AAGFJ-5549-K

: प्रत्यर्थी/ Respondent

**Appellant by** : Shri Rameshwar Meena  
**Respondent by** : Shri Subodh Ratnaparkhi  
सुनवाई की तारीख/  
**Date of Hearing** : 20/04/2022  
घोषणा की तारीख /  
**Date of Pronouncement** : 20/04/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax(Appeals) National Faceless Appeal Centre, Delhi (in short 'the CIT(A)') for the Assessment Years 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 17/08/2021.

Since, identical issue is involved in both these appeals and identical grounds are raised assailing the findings of CIT(A) in deleting penalty u/s 271(1)(c) of the Income Tax Act, 1961 (herein after referred to as 'the Act'), these appeals are taken up together for adjudication and are decided by this common order.

**ITA NO. 1989/MUM/2021 (A.Y.2010-11)**

2. Shri Subodh Ratnaparkhi appearing on behalf of the assessee submitted that in assessment proceedings u/s. 143(3) r.w.s. 147 of the Act, addition was made in the hands of assessee on account of bogus purchases. The Assessing Officer made estimated addition @20% of the alleged bogus purchases. Thereafter, the Assessing Officer levied penalty u/s. 271(1)(c) of the Act vide order dated 20/08/2015 levying penalty of Rs.14,734/- in Assessment Year 2010-11. Aggrieved by the penalty order the assessee carried the issue in appeal before the CIT(A). The CIT(A) vide impugned order deleted the penalty after considering the facts of the case and various decisions of the Tribunal . The CIT(A) deleted the penalty on the ground that no penalty can be levied on estimated addition. The Id. Authorized Representative for the assessee vehemently supported the order of CIT(A) and prayed for dismissing the appeal by Revenue.

3. Per contra Shri Rameshwar Meena representing the Department strongly supported the penalty order and prayed for reversing the findings of CIT(A) in deleting the penalty levied u/s. 271(1)(c) of the Act. The Id. Departmental Representative submitted that the assessee has failed to discharge its onus in proving genuineness of purchases. The assessee furnished inaccurate particulars of its income to suppress the tax liability.

4. Both sides heard, orders of authorities below examined. It is an undisputed fact that in the instant case penalty has been levied in respect of addition on account of bogus purchases. The addition has been made merely on estimation of suppressed profit margin on unproved purchases. There is no concrete finding of the Assessing Officer as to what is the amount unreported that has lead to escapement of income from tax net. The addition is made by estimating escaped income @ 20% of unproved purchases.

5. The Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580 has held that where addition is made purely on estimate basis, no penalty u/s. 271(1)(c) of the Act is leviable. Similar view has been expressed by Ho'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53. The Hon'ble High Court approving the order of Tribunal held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty u/s. 271(1)(c) of the Act is not leviable. The Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd. reported as 221 ITR 110 has taken a similar view in respect of penalty levied u/s. 271(1)(c) of the Act on estimated additions. There are catena of decisions by different High Courts and various Benches of the Tribunal wherein penalty levied u/s. 271(1)(c) of the Act on estimated addition has been deleted.

6. In the facts of the case and in the light of aforementioned decisions, we see no infirmity in the order of CIT(A), hence, the impugned order is upheld and appeal by the Revenue is dismissed being devoid of any merit.

**ITA No.1988/Mum/2021 (A.Y- 2011-12):**

7. Both sides are unanimous in stating that the facts germane to levy of penalty u/s. 271(1)(c) of the Act in Assessment Year 2011-12 are identical. The grounds of appeal in Assessment Year 2011-12 are identical to the grounds raised by the Revenue in Assessment Year 2010-11. The findings given by us while adjudicating the appeal of Revenue for Assessment Year 2010-11 would *mutatis mutandis* apply to the present appeal as well. For parity of reasons, appeal by the Revenue for Assessment Year 2011-12 is dismissed.

**8. In the result, appeal by the Revenue for Assessment Year 2010-11 and 2011-12 are dismissed.**

Order pronounced in the open Court on Wednesday, the 20<sup>th</sup> day of April, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 20/04/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**