

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA Nos. 58 & 59/Mum/2022
(A.YS: 2009-10 & 2010-11)

ITO, Ward 3(2) 2 nd Floor, RaniMansion, Murbad, Road, Kalyan(W)-42131 Maharashtra		M/s Navjeevan Engineering Works D-18, MIDC, Phase-II Manpada Road, Dombivali (E) Maharashtra – 421204
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AABFN2813K		
Appellant	..	Respondent

Appellant by :	Shri. Love Kumar.DR
Respondent by :	None

Date of Hearing	26.04.2022
Date of Pronouncement	27.04.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

These are the appeals filed by the revenue against the separate orders of the National Faceless Appeals Centre (NFAC) Delhi passed u/s 271(1)(c) and 250 of the Act.

Since the issues in these two appeals are common and identical, hence they are clubbed; heard and consolidated order is passed.

For the sake of convenience, we shall take up revenue appeal in ITA No. 58/Mum/2022, for the A.Y 2009-10 as a lead case and facts narrated. The revenue has raised the following grounds of appeal.

1. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) was justified in not considering that the penalty was levied on the addition made on the basis of information received from the Sales Tax Department, Maharashtra with regard to bogus purchase made by the assessee from dealers without supply of actual goods.*
2. *The appellant prays that order of the Ld. CIT(A), may be set aside and that of the AO be restored.*
3. *The appellant craves leave to add, amend or alter any ground / grounds which may be necessary.*

2. The brief facts of the case that the assessee is a partnership firm and is engaged in the business of fabrication of all types of iron & Steel & manufacturing of engineering goods. The assessee has filed the return of income on 27.09.2009 for the A.Y 2008-09 disclosing a total income of Rs.9,61,886/- and the return of income was processed u/s 143(1) of the Act. The Assessing officer (A.O) received the information

from Sales Tax Department Maharashtra, the list of the persons who have provided entries for bogus purchase bills to the tax payers. On verification of the facts, the A.O. find that the assessee is one of the beneficiary and has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. Subsequently the notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance to notice, the assessee has submitted the Tax audit report u/sec44AB, Form No. 3CB & 3CD, along with profit and loss account, Balance sheet and annexure. The assessee has filed a letter to treat the return of income filed on 27.09.2009 as due compliance to notice u/s 148 of the Act.

3. The A.O. observed that the assessee derives income from fabrication of all types of iron & steel and manufacturing of engineering goods and disclosed net profit @5.08%. The A.O. found that the assessee has made purchases from nine parties aggregating to Rs. 23,04,511/- and the assessee was called to submit the copies of purchase bills, transport bills, delivery challans, and octroi payments pertaining to purchase transactions. Since the assessee has not submitted the

details, the A.O. has issued the notice u/s 133(6) of the Act on the nine parties in respect of purchases and genuineness and no reply was received. Therefore the AO has called for the additional details from the books of accounts maintained as per the Tax audit report. The A.O. found that the genuineness of the purchase transactions could not be established by the assessee with evidences and rejected the books of accounts u/s 145(3) of the Act and made addition u/sec69C of the Act of Rs.23,04,511/- and passed the order u/s 143(3) r.w.s 147 of the Act on 05.03.2015.

4. Subsequently, the AO has initiated the penalty proceedings u/s 271(1)(c) of the Act. In the course of penalty proceedings it was brought to the knowledge of the Assessing officer that the assessee has filed an appeal with the CIT(A) on quantum addition of bogus purchases. Whereas, the CIT(A) has relied on the facts and judicial decisions and restricted the addition to the extent @ 25% of purchases. The A.O. has considered these facts and observed that none appeared on behalf of the assessee nor any explanations were filed in respect of penalty notice. The A.O. dealt on the findings of the scrutiny

assessment and levied a penalty of Rs. 1,78,020/- and passed the order u/s 271(1)(c) of the Act dated 23.03.2018.

5. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A), the CIT(A) has considered the grounds of appeal, findings of the A.O and the submissions of the assessee and observed that the A.O has made addition of bogus purchases in the assessment U/sec143(3) r.w.s Sec147 of the Act. Further, the Ld.CIT(A) in quantum appeal has restricted the addition by estimating gross profit/income @ 25%. But the A.O has levied the penalty u/sec 271(1)(c) of the Act on the estimated income. The CIT(A) dealt on the provisions of Sec. 271(1)(c) of the Act and relied on the Coordinate Bench of Hon'ble Tribunal and the Hon'ble High Court decisions and observed that no penalty can be levied on estimated income and directed the A.O to delete the penalty and allowed the assessee's appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Hon'ble Tribunal.

6. At the time of hearing, none appeared on behalf of the assessee. Contra, the Ld. DR submitted that the CIT(A) erred in deleting the penalty, whereas the A.O has received the information that, the assessee has obtained bogus purchase bills and the same could not be overlooked and prayed for allowing the revenue appeal.

7. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has erred in deleting the penalty overlooking the transactions of bogus purchases. Whereas, the Ld.CIT(A) considering the facts and circumstances observed that the penalty cannot be levied on estimated income. We find that the CIT(A) has estimated income/gross profit @ 25% on bogus purchases.

8. We are of the opinion that when the addition is on estimated basis, penalty u/s 271(1)(c) of the Act cannot be levied on such adhoc estimated income. The disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the

Act. The A.O. has not doubted the sales and made disallowance of bogus purchases and we rely on the ratio of the Honorable Jurisdictional High Court in the case of M/s Nikunj Eximp Enterprises Vs Cit (W.P.No 2860 dated 18-06-2014). Further the assessing officer made an addition based on the information received from Sales tax department Maharashtra. We are of the opinion that once the revenue accepts that penalty is levied on the basis of information from the outside agency/ department, the penalty is not sustained. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidences or information to take different view. Accordingly, we are not inclined to interfere with the order of the Ld.CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue .

ITA.No. 59/Mum/2022, A.Y 2011-12

9. As the facts and circumstances in this appeal is identical to ITA No. 58/Mum/2022 for the A.Y.2009-10 except the variance figures. Therefore, the decision rendered in above paragraphs would apply mutatis

mutandis for this appeal also. Accordingly, grounds of appeal of the revenue are dismissed

10. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27.04.2022

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 27.04.2022

KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	26.04.2022		PS
2.	Draft placed before author	27.04.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			