

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. 2479/मुं/2021(नि.व.2009-10)
ITA NO. 2479/MUM/2021(A.Y.2009-10)

Asst. Commissioner of Income Tax – 7(1)
Room No.117, 1ST Floor, Kautilya Bhavan,
Bandra Kurla Complex, Bandra(E),
Mumbai -400 051.

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Vinod Kumar Premchand Aggarwal,
3/1 Bradys Flats, Sorab Bharucha Road,
Colaba, Mumbai 400 005
PAN: ACSPA-0793-N

: प्रत्यर्थी/ Respondent

Appellant by : Shri S.N.Kabra
Respondent by : Shri Prakash Jhunhunwala for
Shri Tanzil Pdvekar

सुनवाई की तारीख/
Date of Hearing : 04/05/2022
घोषणा की तारीख /
Date of Pronouncement : 04/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 31/08/2021 for the assessment year 2010-11.

2. This appeal is time barred by 60 days. Shri S.N.Kabra representing the Department submitted that the delay in filing of the appeal was on account of COVID-19 Pandemic . The limitation for filing the appeal was extended by the Hon'ble Supreme Court of India on its own motion to mitigate the hardship caused due to COVID 19 Pandemic. The limitation for filing of appeals under various laws was extended by general order reported as Cognizance for Extension of Limitation 132 taxmann.com 123. In the present case the impugned order was passed on 31/08/2021. The appeal before the Tribunal was filed on 29/12/2021. The appeal has been filed within extended period of limitation. Hence, no delay in filing of the appeal.

3. The Id.Departmental Representative submitted that the appeal is against the order of CIT(A) deleting penalty levied under section 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act']. The assessee has indulged in obtaining bogus purchase bills. The addition of Rs.68,78,286/- was made by the Assessing Officer in reassessment proceedings on account of boguspurchases. Consequent to the addition, penalty under section 271(1)(c) of the Act was levied by the Assessing Officer vide order dated 12/03/2019. The CIT(A) deleted the penalty. The Id.Departmental Representative prayed for upholding the order levying penalty.

4. Per contra, Id.Counsel appearing on behalf of the assessee vehemently defended the impugned order. The Id.Counsel for the assessee submitted that the Tribunal in Cross Objection of the assessee i.e. C.O No.176/Mum/2018 arising out of ITA No.4172/Mum/2017 for assessment year 2009-10 vide order dated 28/02/2019 has held reopening of assessment under section 147 of the

Act as invalid. Once the reassessment is held to be invalid, the addition does not survive. Hence, there is no question of levying penalty under section 271(1)(c) of the Act.

5. Both sides heard. The Revenue is in appeal assailing the order of CIT(A) deleting the penalty levied under section 271(1)(c) of the Act . At the outset it is observed that Co-ordinate Bench of the Tribunal has held the reassessment proceedings under section 147 of the Act as invalid, wherein the addition on account of bogus purchases were made in the hands of assessee. Once the assessment is held to be invalid, penalty proceedings does not survive. The CIT(A) has deleted the penalty precisely for the reason that the Tribunal has held the reassessment proceedings as invalid. We find no infirmity in the impugned order. Consequently, the same is upheld and the appeal of Revenue is dismissed.

Order pronounced in the open Court on Wednesday the 4th day of May, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 04/05/2022

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