

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

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

**ITA.NO. 1926 & 1927/MUM/2021 (A.Ys: 2009-10)**

Chirag R. Shah 801, Laxmi Villa, Road No. 3 Plot No. 81, Jawahar Nagar Near Suvidha Hospital Goregaon (W), Mumbai – 400104  <b>PAN: AVQPS7888H</b>	v.	Income Tax Officer – 31(1)(1) Kautilya Bhavan G-Block, Bandra Kurla Complex Bandra(E), Mumbai - 400051
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Vimal Punmiya</b>
<b>Department by</b>	:	<b>Shri Love Kumar</b>
<b>Date of Hearing</b>	:	<b>26.04.2022</b>
<b>Date of Pronouncement</b>	:	<b>17.06.2022</b>

**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), National Faceless Appeal Centre, Delhi [hereinafter for short "Ld. CIT(A)] dated 28.08.2021 31.08.2021 for the A.Y. 2009-10 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 an individual, engaged in the business of trading in ferrous and non-ferrous metals filed return of income on 28.09.2009 declaring income of ₹.3,31,681/- for the A.Y. 2009-10. The return was processed u/s.143(1) of Income-tax Act, 1961 (in short "Act"). The return was selected for scrutiny and assessment was completed u/s. 143(3) of the Act dated 30.12.2011 assessing total income at ₹.5,29,180/-, making addition of ₹.1,97,500/- on account of disallowance of unsecured loan u/s. 68 of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department/DGIT (Investigation), Mumbai about the accommodation entries provided by various dealers and assessee is also one of the beneficiary from those dealers. Assessing Officer observed that assessee has taken accommodation entries from seven hawala dealers totaling to ₹.2,35,15,773/-. Accordingly, assessment was reopened u/s. 147 of the Act and completed the re-assessment on u/s. 143(3) r.w.s 147 of the Act, rejecting the Books of Accounts of the assessee u/s. 145(3) and estimated a Gross Profit of 8% on the bogus purchases of ₹.2,35,15,773/-. While completing the reassessment the Assessing Officer treated purchases of ₹.2,35,15,773/- 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 delivery challans to prove that goods have been actually received by the assessee from the alleged suppliers. 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 Coordinate Bench by relying on the decision of the Pr.CIT v. M. Haji Adam & Co in ITA.No. number 1004 of 2016 dated 11.02.2019 restricted the addition to gross profit rate on such alleged bogus purchases at the same rate as that of the genuine purchases.

**3.** Subsequently, Assessing Officer initiated penalty proceedings and levied penalty of ₹.43,691/- in respect of addition of unsecured loans in the original assessment u/s. 143(3) of the Act and ₹.5,81,309/- for furnishing inaccurate particulars of income in respect of purchases of ₹.18,81,261 (being 8% Gross Profit of ₹.2,35,15,773/-) initiated penalty against the re-assessment proceedings u/s. 271(1)(c) of the Act, 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 these orders of the Ld.CIT(A), assessee is in appeal before us.

**4.** Ld. Counsel for the assessee relied on the written submissions and requested to delete the penalty levied made by the Assessing Officer.

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

**6.** Considered the rival submissions and material placed on record. We observe from the submissions and the penalty notice issued by the Assessing Officer which is placed on record that the notices issued u/s. 274 r.w.s. 271(1)(c) of the Act are clearly defective due to non communication of correct initiation of penalty proceedings, whether on the concealment or inaccurate particulars of income. The Hon'ble Jurisdictional High Court at Goa in the case of Pr.CIT *v.* Goa Coastal Resorts and Recreation Pvt. Ltd., in Tax Appeal No. 24 of 2019 dated 11.11.2019 decided the issue in favour of the assessee by treating the notice as defective. Respectfully following the same, we are inclined to treat both the notices u/s. 274 of the Act as defective and delete the penalty in both the appeals filed by the assessee.

**7.** In the case of penalty imposed on the basis of re-assessment proceedings, it is a settled position of law that penalty cannot be levied when an adhoc estimation is made. In the instant case profit element on the alleged bogus purchases was estimated on adhoc basis at 8% by Assessing Officer as well as Ld.CIT(A). The Coordinate Bench of the Tribunal on considering facts restricted the addition to Gross Profit rate on such bogus purchases at the same rate as that of the other genuine purchases.

**8.** 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."*

**9.** 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.

**10.** In the case on hand the Ld. CIT(A) as well as Coordinate Bench in assessee's case, only 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, we direct the Assessing Officer to delete the penalty levied u/s.271(1)(c) of the Act for the Assessment Year under consideration.

**11.** In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 17<sup>th</sup> June, 2022.

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

Mumbai / Dated 17/06/2022  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

1. The Appellant
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**