

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1331/Mum/2021

(A.Y: 2014-15)

Blues IT Innovations India Pvt Ltd., B-101, Bhumi Enclave, Mahaveer Nagar, Kandivali (W) Mumbai – 400067.	Vs.	ITO – 12(1)(3) AB 145A, Aayakar Bhavan, Mumbai -400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCB4562D		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Pramod Nikalje.DR

Date of Hearing	15.06.2022
Date of Pronouncement	20.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of CIT(A)- National Faceless Appeal Centre(NFAC) Delhi passed u/s 271(1)(c) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Ld.CIT(A) erred in confirming the penalty levied of Rs.4,01,919/- under section 271(1)(c) of the Income Tax Act 1961.*

2.The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing..

2. The brief facts of the case are that the assessee is engaged in the business and filed the return of income for the A.Y 2014-15 on 25.12.2014 disclosing a total income of Rs. Nil, subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice the Ld. AR of the assessee and the director of the company appeared from time to time and submitted the copy of tax audit report, balance sheet, P & L Account and the case was discussed. The assessing Officer (A.O) as per the information received from the DGIT(Inv) Mumbai based on sales tax authorities facts, find that the assessee has claimed bogus purchases aggregating to Rs. 13,00,711/- from the four parties. The A.O to test check the information has issued notice u/s 142(1) of the Act to submit the details of purchases and corresponding sales of the finished products, ledger account of the parties, lorry receipts, delivery challans, and other details. However, the assessee could not file the details before the

completion of the scrutiny assessment and therefore the A.O. made addition of Rs.13,00,711/-. Similarly A.O. made disallowance of expenses as the details were not filed and estimated disallowance@ 10% of expenses which worked out to Rs. 63,625/- and assessed the total income of Rs.12,07,797/- and passed the order u/s 143(3) of the Act dated 28.12.2016.

3. Subsequently, the A.O. has initiated penalty proceedings u/s271(1)(c) of the Act, Since the assessee has entered into bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and the assessee has not filed the reply/explanations in the penalty proceedings. Finally, the A.O has levied penalty based on the additions of bogus purchases which worked out to Rs. 4,01,919/- and passed the order u/s 271(1)(c) of the Act dated 27-06-2017.

4. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and the submissions of the assessee but the confirmed the action of the A.O in

levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

5. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the assessment order under section 143 of the Act. We find the A.O has made adhoc disallowance of bogus purchases and has accepted the sales in the books of accounts. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. The disallowance of purchases on ad-hoc/estimated 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. Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal in favour of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

ITA No. 1331/Mum/2021
Blues IT Innovation India Pvt Ltd, Mumbai

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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai