

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.1249/Mum/2022
(Assessment Year :2009-10)**

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| M/s. Spontaneous Chem Pvt. Ltd., 330/14, Samuel Street K.NT Building 2 nd Floor, Vadgadi Masjid, Mumbai – 400 003 | Vs. | ITO 8(2)(3) Ayakar Bhawan R.No.618, 6 th Floor M.K.Road, Mumbai – 400 020 |
| PAN/GIR No.AACCS5343K | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-------------------------|
| Assessee by | None |
| Revenue by | Shri Tejinder Pal Singh |
| Date of Hearing | 03/08/2022 |
| Date of Pronouncement | 04/08/2022 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1249/Mum/2022 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal No.CIT(A), Mumbai – 14/10029/2019-20 dated 25/03/2022 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act in respect of addition made on account of bogus purchases on an estimated basis.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. It is not in dispute that assessee had made certain purchases from six parties totalling to Rs.1,51,26,291/- whose names have been treated as tainted dealers by the Sales Tax department of Government of Maharashtra. The assessee is engaged in the business of trading in chemicals. The Id. AO during the course of quantum assessment proceedings had observed that assessee had submitted the details of entire purchases and had duly entered in the stock register and also furnished the details of further corresponding sales thereof. Since assessee could not prove the veracity of the purchases beyond reasonable doubt, the Id. AO proceeded to bring to tax only the profit element embedded in the value of such disputed purchases. This profit element was estimated by the Id. AO at 12.5% and addition was made in the assessment. This action of the Id. AO was upheld by the Id. CIT(A). Subsequently, penalty u/s.271(1)(c) of the Act was levied by the Id. AO on the addition sustained by the Id. CIT(A). This levy of penalty also was upheld by the Id. CIT(A).

3.1. From the above narration of facts, it could be seen that ultimately penalty has been levied u/s.271(1)(c) of the Act for an addition made on an estimated basis. It is trite law that no concealment penalty u/s.271(1)(c) of the Act could be made on an estimated addition. Hence, we have no hesitation in directing the Id. AO to delete the levy of penalty

u/s.271(1)(c) of the Act in the instant case. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 04/08/2022 by way of proper mentioning in the notice board.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/08/2022
KARUNA, *sr.ps*

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,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai