

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI M. BALAGANESH, AM**

आयकरअपीलसं./ I.T.A. No. 1588 & 1589/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2010-11 & 2011-12)

<b>Superflo Filters Pvt. Ltd.</b> B-5/103-104 Greenland Co-op. Society, Shrinivas Bagarka Road, J. B. Nagar Andheri (East), Mumbai-400 059	<u>बनाम/</u> Vs.	<b>National Faceless Assessment Centre, Delhi</b>
स्थायीलेखासं ./जीआइआरसं ./PAN No. AADCS4955N		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	None
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri U. Singh, Ld. DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	23.08.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	23.08.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeals have been filed by the assessee against the separate impugned order of even date 31.05.2022, passed by National Faceless Appeal Centre (NFAC), Delhi in relation to penalty proceedings u/s 271(1)(c) for AY 2010-11 and 2011-12.

2. In both assessment years, the issues are common arising out of identical set of facts, therefore the same were heard together and disposed of by way of this consolidated order.

3. In AY 2010-11, assessee is aggrieved by levy of penalty of Rs. 47,904/- on account of estimated disallowance of GP rate on alleged non-genuine purchases. Similarly in AY 2011-12, assessee is aggrieved by levy of penalty of Rs. 5,26,047/- on the same ground.

4. The facts in brief are that in AY 2010-11, AO on the basis of certain information received from Sale Tax Department noted that assessee had made purchases of Rs. 12,40,195/- from 3 parties which he treated to be as non-genuine, despite assessee had filed all the relevant details of purchases and sale quantity. Ld. CIT(A) in the quantum proceedings reduced the addition by applying GP rate @ 12.5% on the alleged bogus purchases.

5. Similarly in AY 2011-12, the AO has treated purchases aggregating to Rs. 1,36,19,291/- made from 7 parties to be bogus on the same ground. In this year also, Ld. CIT(A) has applied 12.5% of GP rate on estimate basis.

6. Before us Ld. Counsel for the assessee submitted that in the sister concern, this Tribunal has deleted the penalty on similar disallowances in the case of **ITO vs. Filtertechnics Pvt. Ltd. (ITA No. 2303/Mum/2019)**.

7. On the other hand, Ld. DR submitted that here in this case, once it is held that assessee had made bogus purchases and assessee had not disclosed correct profits on such purchases, therefore penalty should be levied on such GP rate addition.

8. After considering the aforesaid submissions and on perusal of the material placed on record, we find that nowhere in the assessment, AO has disputed the quantity of purchases or sale or has rejected the books of accounts. Even the overall GP rate disclosed by the assessee has been accepted. The addition which has been made is on the account of alleged bogus purchases from certain parties and the source of such purchases have been routed through books of accounts and the entire quantity has also been recorded. There is no discrepancy in the trading account of such purchases. The allegation is that assessee might have given cheque to these parties and received back the cash for making purchases

from some other parties. But this fact has not been established. Merely the addition has been made on account of gross profit that to be on estimation of GP @ 12.5%, it does not lead to conclusion that assessee has concealed inaccurate particulars of income. This Tribunal in case of sister concern cited supra precisely on same issue has deleted the penalty, which reads as under:-

*2. Grievance raised by the appellant, in the form of a question posed for our consideration, is as follows:*

*Whether on the facts and in the circumstances of the case and in law, was learned CIT(A) right in deleting the penalty of Rs 12,28,633 levied under section 271(1)(c) of the Income Tax Act, 1961?*

*3. To adjudicate on this grievance, only a few facts need to be referred to. In the course of the scrutiny assessment proceedings, the Assessing Officer made an addition of Rs 39,59,200 on account of bogus purchases, and of Rs 16,964 on account of disallowance of interest for funds used for purchase of land. It was for this reason that a penalty of Rs 12,28,630 under section 271(1)(c) was also imposed on the assessee for furnishing of inaccurate particulars and for concealment of income. Aggrieved, assessee carried the matter in appeal before the CIT(A). In the meantime, the quantum additions travelled in appeal before a coordinate bench of this Tribunal, and the addition of Rs 39,59,200 was restricted to*

*Rs 4,94,900, being 12.5% profit element estimated to be embedded therein. Learned CIT(A) took note of this fact, and of various coordinate bench decisions holding that no penalty under section 271(1)(c) can be imposed in the cases of additions on estimated basis, as in this case. He thus deleted the impugned penalty of Rs 12,28,630. The Assessing Officer is aggrieved of the relief so granted by the CIT(A), and is in appeal before us.*

*4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

*5. We have noted that so far as the addition on account of bogus purchases is concerned, it stands reduced to Rs 4,94,900 anyway, and that too entirely on the estimated basis @ 12.5% being profits embedded in these bogus purchases. It is by now consistent stand of the coordinate benches that in the cases of such additions on estimated basis, penalty under section 271(1)(c) cannot be imposed. In the case of Chempure Vs ITO [(2010) 40 SOT 164 (Mum)], a coordinate bench, dealing with a materially identical addition in respect of bogus purchases wherein profit embedded therein was computed @25%, had come to the conclusion that no penalty under section 271(1)(c) can be imposed in such a case, and the view so taken by the coordinate bench has been consistently followed in a large number of cases. In the case of Earthmoving Equipment Service Corporation Vs DCIT [(2017) 84 taxmann.com 51*

(Mum)], the same view was reiterated, and it was concluded as follows:

7. On merits, Ld. AR has assailed imposition of penalty on various grounds and placed reliance on various judicial pronouncements which we have duly considered. We find that first of all Section 69C could not be applied to the facts of the case as the payments were through banking channels which were duly reflected in the books of accounts and therefore, there was no unexplained expenditure within the meaning of Section 69C incurred by the assessee. Further, we find that the assessee was in possession of purchase invoices and various other documentary evidences qua these purchases. A bare perusal of the purchase invoices reveals that the assessee has purchased consumables etc. from the alleged bogus suppliers, which are connected, at least to some extent, with the business of the assessee. The assessee, during quantum proceedings itself filed revised computation of income after disallowing the alleged bogus purchases by citing the reason that the suppliers were not traceable during assessment proceedings. Nevertheless, the assessee was in possession of vital evidences in his possession to prima facie substantiate his purchases to some extent particularly when the payments were through banking channels. Merely because the suppliers could not be traced at the given address would not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the assessee. The assessee made a claim which

*was bona fide and the same was coupled with documentary evidences but the same remained inconclusive for want of confirmation from the suppliers. Therefore, overall facts of the case do not justify imposition of penalty on the assessee and therefore, the same deserves to be deleted on merits of the case. All the cited case laws support the view taken by us in the matter. Therefore, by deleting the impugned penalties, we allow assessee's appeal.*

*6. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the consistent views of the coordinate benches, and bearing in mind the fact that the related quantum additions were purely on estimated basis with inherent subjectivity involved, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter. No interference is called for in the well reasoned and right conclusions arrived at by the learned CIT(A).*

9. The aforesaid proposition is squarely applicable in this case.

Accordingly, the penalty levied by the AO is directed to be deleted.

10. In the net result, the appeal filed by the assessee stands **allowed.**

*Orders pronounced in the open court on 23<sup>rd</sup> August, 2022.*

*Sd/-*  
**(M. Balaganesh)**  
Accountant Member

*Sd/-*  
**(Amit Shukla)**  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 23/08/2022

Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai