

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

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

आयकरअपीलसं./ I.T.A. No. 1673 & 1674/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2009-10 & 2010-11)

<b>ACIT of Income Tax Circle-1</b> 1 <sup>st</sup> Floor, Mohan Plaza, Wayle Nagar, Kalyan West-421301	<b>बनाम/ Vs.</b>	<b>M/s Thakor Electronics Ltd.</b> P-1, P-2, 1 <sup>st</sup> floor, Shree Rajlxmi Hi-Tech Textile Park, Bhiwandi-Nashik By Pass Road, Sonale Village, Thane-421302
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCT4323M		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Thanzil Padvekar, Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri U. R. Singh, Ld. AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	24.08.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	24.08.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeals have been filed by the revenue against the separate impugned order of even date 23.03.2022, passed by National Faceless Appeal Centre, Delhi in relation to penalty

proceedings u/s 271(1)(c) of the Act for AY 2009-10 & 2010-11 respectively.

2. In both the years, revenue is aggrieved by deletion of addition on account of bogus purchases. Ld. AO had treated the bogus purchases of Rs. 77,73,415/- for AY 2009-10 and Rs. 36,62,945 for AY 2010-11.

3. It has been brought on record before us that Ld. CIT(A) in the quantum proceedings has reduced the disallowance on account of bogus purchases by applying GP rate @ 25%. Later on, the Tribunal has reduced it further to 12.5% of GP on bogus purchases. Ld. CIT(A) has sustained the penalty on the quantum of GP of 12.55 and balance has been deleted.

4. The Tribunal in assessee's own case for AY 2009-10 and 2011-12 has deleted the said penalty after observing as under:-

*2. We advert to the basic relevant facts the assessee is doing business of manufacturing of resistances and operates under the name and style of M/s Thakor Electronics Ltd. had been assessed to the Income Tax by the ld. AO for the assessment years 2009-10. The assessment was completed u/s 143(3) r.w.s 147 of the Act vide order dated 20.03.2015 and assessed the total income of Rs.*

1,16,66,550/- as against the return income of Rs. 38,92,511/-. The addition was made on account of unsubstantiated purchases amounting to Rs. 77,73,415/- and Rs. 625/- on account of deduction under chapter VIA of the Act for the assessment year 2009-10. The assessee had then filed an appeal before the Ld. CIT(A) against the addition on account of unsubstantiated purchases amounting to Rs. 77,73,415/- and the disallowance was sustained @ 25%. After giving effect to the same the order was passed dated 03.10.2016 by the ld.AO. The Ld. A.O. proceeded the penalty u/s 271(1)(c) of the Act and levy of penalty on concealed income to extent of Rs. 19,43,354/- and penalty was calculated of Rs. 6,66,690/- which is 100% of the tax amount. Aggrieved the assessee filed an appeal before the Ld. CIT(A). In quantum appeal against the order of appellate authority, the ITAT had restricted the quantum addition @ 12.5% of bogus purchase. As a result, the addition had been reduced to Rs. 9,71,677/- accordingly. The penalty was calculated and levied amounting to Rs. 3,00,247/- u/s 271(1)(c) of the Act.

2.1 The learned counsel of the assessee argued and placed that after the order of the assessing authority u/s 143(3)/147 of the Act, the assessee filed an appeal to Ld. CIT(A) and finally the order was challenged to ITAT. The ITAT has reduced the quantum addition and sustained the addition @ 12.5% of bogus purchase. The order of the ITAT bearing in ITA No. 6427/Mum/2016 for the assessment 2009-10 and ITA No. 6484 & 6485/Mum/2016 for the assessment years 2009-10 & 2010-11. The addition was fully on

*basis of estimated addition on bogus purchase. The learned counsel relied on the order of the Coordinate Bench in the case of M/s S4 Interior vs. ACIT in ITA No. 4422/Mum/2017 dated 26.09.2018 A.Y. 2009-10. As per this order the penalty on estimated addition was deleted.*

*3. The ld. DR only relied on the order of the Revenue Authorities. No other contrary view was taken by the ld. DR against the submission of the assessee.*

*4. We heard the rival submission and relied on the documents available in the record. The addition was made by the Revenue Authorities on bogus purchase. Later, the addition was reduced by the order of ITAT @ 12.5% of bogus purchase & estimated addition was made. The penalty on estimated addition is contrary view of Coordinate bench discussed above. The ld. DR did not make any strong objection against the assessee's submission. Here we are directing to delete the penalty amounting to Rs. 3,00,247/- imposed by the A.O. u/s 271(1)(c) of the Act.*

5. Once the quantum addition itself has been reduced after applying GP adhoc rate and Ld. CIT(A) has deleted the penalty on the amount which has been deleted, therefore penalty cannot be sustained on such ad hoc GP rate. Moreover the Tribunal itself has deleted the penalty on such ad hoc addition based on GP rate, therefore the penalty which has been deleted by Ld. CIT(A) is

confirmed. Accordingly, the grounds raised by the revenue in both the years are dismissed.

6. In the net result, both the appeals filed by the revenue are **dismissed.**

*Orders pronounced in the open court on 24<sup>th</sup> August, 2022.*

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

*Sd/-*  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 24/08/2022  
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**