

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI M. BALAGANESH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1941/MUM/2021
(ASSESSMENT YEAR: 2009-10)

Siddhant Diamonds Pvt. Ltd.,
301, Mehta Bhavan, 311,
Charni Road, Mumbai - 400004
[PAN: AAEC58548Q]

..... Appellant
Vs

ACIT, Circle 5(3)(1), Mumbai,
Aayakar Bhavan,
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Sh. B.K. Bagchi

Date of conclusion of hearing : 09.06.2022
Date of pronouncement of order : 26.08.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 11.10.2021 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the CIT(A) had dismissed the appeal filed by the Appellant/Assessee against the penalty order dated 29.01.2019 passed under Section 271(1)(c) of the Act [hereinafter referred to as 'the Act'].
2. Appellant has raised solitary ground challenging levy of penalty of INR 17,440/- by the Assessing Officer under Section 271(1)(c) of the

Act which has been confirmed by the CIT(A) leading to the filing of the present appeal.

3. Brief facts of the case are that the Appellant is a company engaged in the business of import/export of diamonds and jewellery. For the Assessment Year 2009-10 assessment under Section 143(3) read with Section 147 of the Act framed on the Appellant vide order dated 04.03.2016 at Total Income of INR 37,45,250/- after making addition of INR 90,812/- being 12.5% of the alleged bogus purchases of INR 7,26,494/- made by the Appellant from M/s A2 Jewels. In appeal filed by the Appellant against the aforesaid assessment order, dated 04.03.2016, the CIT(A) further reduced the addition to INR 58,120/- being 8% of the alleged bogus purchases. The appeal filed by the Appellant before the aforesaid order of CIT(A) was dismissed by the Tribunal.
4. Since the Assessing Officer had also initiated penalty proceedings under Section 271(1)(c) of the Act, in the meanwhile, the Assessing Officer passed penalty order on 29.01.2019 levying penalty of INR 17,440/- on the Appellant. Being aggrieved the appeal preferred appeal before CIT(A) which was dismissed. Now the Appellant is in appeal before us.
5. When the matter was taken up for hearing none was present for the Appellant. We have considered the submissions advanced by the Ld. Departmental Representative and perused the material on record including the orders passed by the authorities below. We note that the Assessing Officer has, in paragraph 5.2 of the Assessment Order, dated 04.03.2016, observed that the Appellant has failed to prove that the purchases were made from M/s A2 Jewels and that the Appellant could have made purchases from

other parties in cash and taken accommodation bills from M/s A2 Jewels. Thus, the Assessing Officer had made disallowance on estimate basis on account of failure of the Appellant to prove purchases. We note that the Tribunal has, in identical facts and circumstances, deleted penalty in the case of ITO-13(2)(4) Vs. M/s Swar Creative Art Pvt. Ltd.: ITA NO.5992/MUM/2019 (21.05.2021) and in the case of ITO 32(1)(5) Vs. M/s. Empee Engineering Corporation : ITA. Nos. 6797 & 6798/MUM/2019 (decided on 22.03.2021). Respectfully following the aforesaid decisions of the Tribunal, we delete the penalty of INR 17,440/- levied under Section 271(1)(c) of the Act.

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

Order pronounced on 26.08.2022.

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.08.2022
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai