

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SMT KAVITA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.1881/Mum/2022
(Assessment Year :2008-09)**

&

**ITA No.1882/Mum/2022
(Assessment Year :2009-10)**

M/s. Manav Gems 910, The Capital Bandra Kurla Complex Bandra East Mumbai – 400 051	Vs.	Asst. Commissioner of Income Tax 19(2) Mumbai Room No.207, 2 nd Floor Matru Mandir Tardeo Road, Mumbai Maharashtra – 400 007
PAN/GIR No.AAOFM2587N		
(Appellant)	..	(Respondent)

Assessee by	Shri Rashmikant Modi & Ms. Ketki Rajshirke
Revenue by	Shri Ratnakar Shelke
Date of Hearing	05/09/2022
Date of Pronouncement	12/09/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.1881/Mum/2022 & 1882/Mum/2022 for A.Y.2008-09 & 2009-10 arise out of the order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal No.CIT(A)-30, Mumbai/10077/2019-20 & CIT(A)-30,

Mumbai/10080/2019-20 dated 31/05/2022 (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 identical issue to be decided in these appeals is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act made by the Id. AO in respect of addition made on account of bogus purchases on an estimated basis.

3. We have heard rival submissions and perused the materials available on record. It is not in dispute that the assessee had made certain purchases which remained unverifiable for both the years under consideration. The purchases made by the assessee were duly sold by the assessee and accordingly, the Id. AO in the quantum proceedings had resorted to bring to tax only the profit element embedded in the value of said purchases. The said profit element was estimated by the Id. AO at 5% which was reduced to 3% by the Id. CIT(A) on first appeal. Due to smallness of the amount, the assessee chose not to prefer further appeals to the Tribunal on the quantum proceedings. Penalty has been levied u/s.271(1)(c) of the Act by the Id. AO on this estimated addition of 3% profit on value of disputed purchases. The law is very well settled that no penalty would lie when an addition has been made on an estimated basis as there cannot be any concealment or furnishing of any inaccurate particulars of income that could be alleged on the part of the assessee with regard to the same. Hence, we have no hesitation in directing the Id. AO to delete the penalty levied u/s.271(1)(c) of the Act for both the years under consideration.

4. In the result, both the appeals of the assessee are allowed.

Order pronounced on 12/09/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 12/09/2022
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