

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

**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.1666/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO, Ward-3(1), Kalyan 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (W), 421301.	<b>बनाम/</b> Vs.	Bhadresh Jayantilal Shah B-106 Shiv Sambhav CHSL, Veer Savarkar Road, Dombivli (E), Thane-421201.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEEPS2956R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vimal Punmiya
Revenue by:	Shri Chetan M. Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 25/08/2022

घोषणा की तारीख /Date of Pronouncement: 22/09/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the revenue against the action of the Ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi dated 11.03.2022 for assessment year 2010-11 deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. The facts of the case is that the AO in the quantum assessment dated 30.12.2014 had added Rs.1,46,635/- being 100% of the alleged bogus purchases. On appeal, the Ld. CIT(A)-1 by order dated 25.06.2018 reduced the same to the extent of 25% of the alleged bogus purchases. Resultantly, the addition was restricted to Rs.36,659/-. On further appeal by revenue, the Tribunal upheld the action of the CIT(A) (ITA. No 5079 & 5080/Mum/2018) and thus the revenue appeal was dismissed.



*ITA No.1666/Mum/2022*  
*A.Y. 2010-11*  
*Bhadresh Jayantilal Shah*

3. Meanwhile, the AO vide order dated 23.03.2020 levied penalty @ 100% of Rs.3,776/- u/s 271(1)(c) of the Act. Aggrieved, the assessee preferred an appeal before Ld. CIT(A)/NFAC who was pleased to delete the penalty by holding as under (relevant portion only): -

“Decision:

I have considered the submission of the appellant and perused the relevant records.

I find that the law is trite that the additions made on estimated basis cannot be subjected to penalty for concealment of income or for furnishing inaccurate particulars of income and thus, various Hon'ble Courts and Tribunals have consistently held the same view while deleting the penalty imposed under section 271(1)(c) qua the estimated additions or estimated disallowances. Hence, it would be pertinent to refer to the ratio of the following.

The Hon'ble Delhi High Court in the case of CIT Vs. Aero Traders Pvt. Ltd. [(2010) 322 ITR 316 (Del.)] has held as under:

“6. Aggrieved by this order, the revenue filed an appeal before the Tribunal. The Tribunal, after hearing the submissions made on behalf of the revenue, came to the conclusion that the CIT(A) had taken the correct decision in deleting the penalty. The operative portion of the impugned order dated 04.12.2008 is as follows:

"As the facts emerge the substantial quantum relief was given by the CIT (A) which has been confirmed by the Tribunal, the balance pertains to estimated rate of profit applied on the turnover of the assessee which in our view does not amount to concealment or furnishing inaccurate particulars. In our view, the CIT (A) has taken right decision in deleting the penalty which is upheld."



*ITA No.1666/Mum/2022*  
*A.Y. 2010-11*  
*Bhadresh Jayantilal Shah*

7. The appeal is filed against the abovementioned order of the Tribunal dated 04.12.2008. The finding arrived at by the Tribunal does not warrant Interference from this court as it is purely a finding of fact. No perversity has been pointed in such a finding, Consequently, no substantial question of law arises for consideration. As a result, the appeal is dismissed.”

4. We note that the Ld. CIT(A)/NFAC has deleted the addition by taking note that the estimated addition could not have been subjected to penalty for a fault i.e. “concealment of the particulars of his income” or “furnishing of inaccurate particulars of such income”. Since the Ld. CIT(A)/NFAC has taken a plausible view in the light of Judicial precedents cited in his impugned order, we are inclined to confirm the action of the Ld. CIT(A). So we dismiss this appeal of the revenue.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 22/09/2022.

Sd/-

**(PRAMOD KUMAR)**  
**VICE PRESIDENT**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 22/09/2022.  
*Vijay Pal Singh, (Sr. PS)*



*ITA No.1666/Mum/2022*  
*A.Y. 2010-11*  
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**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.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

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