

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 160/Del/2020 : Asstt. Year : 2010-11**

Amit Gupta, D-205, 4 <sup>th</sup> Floor, Ashok Vihar, Phase-1, New Delhi-110052	Vs	Income Tax Officer, Ward-34(3), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AETPG4486K</b>		

**Assessee by : Sh. Lakshya Goel, Adv.**

**Revenue by : Sh. Kanav Bali, Sr. DR**

<b>Date of Hearing: 25.10.2022</b>
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<b>Date of Pronouncement: 25.10.2022</b>
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**ORDER**

**Per Kul Bharat, Judicial Member:**

This appeal by the assessee against the order of Id. CIT(A)-23, New Delhi dated 29.11.2019 pertaining to A.Y. 2010-11.

2. The assessee has raised following grounds of appeal:

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 271(1)(c) of the Income Tax Act, 1961 amounting to Rs. 29,97,071/-.*

*2. That Ld. CIT(A) erred in law and on facts in upholding the penalty levied by Ld. AO is totally unjustified and is liable to be deleted, where the Ld. AO has accepted the sales amounting to Rs. 98,68,470/- and added to the income of the assessee without reducing cost of sales.*

*3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

3. At the outset, the Id. Counsel for the assessee submitted that the Id. CIT(A) in quantum proceedings has deleted substantial impugned additions. He submitted that out of addition of Rs.98,68,472/-, the Id. CIT(A) sustained the addition of Rs.8,60,649/-. He further submitted that the imposition of penalty by the Assessing Officer on the entire addition is not justified. He submitted that the penalty imposed by the Assessing Officer amounting to Rs.29,97,071/- may be deleted.

4. On the contrary, the Id. DR opposed the submission and supported the Assessment Order.

5. We have heard the rival contention and perused the material on record. We find that the Id. CIT(A) in quantum proceedings has given a finding on fact which is reproduced as under:

*"4.2.12 As per the material on record there are cash deposits in the ICICI bank to the tune of Rs. 98,68,470/- and these proceeds were used to make purchases to the tune of Rs. 95,64,760/-. Out of these purchases of Rs. 95,64,760/-, the purchase of Rs. 90,07,821/- have been made through cheques and purchases of Rs. 5,48,900/- have been made through cash. At this stage it is not possible to verify whether payment in cash have been made to the suppliers or not. Further, in this case the primary ground to consider sales as genuine is that the payment have been made through cheque which is verifiable. The payment made in cash cannot be conclusively verified at this stage and therefore cannot be considered as genuine payment for purchases. Therefore the alleged purchases to the tune of Rs. 5,48,900/- made through cash cannot be considered as genuine and are accordingly not allowed. The purchases amounting to Rs.*

*90,07,821/- made through the banking channels can only be considered as genuine purchases.*

*4.2.13 The appellant as per his trading account have mentioned that profit, to the tune of Rs, 3,03,710/- has not been disclosed for the purpose of tax. However no such trading account was furnished and therefore the same cannot be relied upon. Further, the cash purchases to the tune of Rs. 5,48,900/- disallowed above has to be added back to the alleged profit. Therefore the undisclosed profit on out of books sale would be the difference of 'total sales' and 'purchases made through cheque'. No benefit of expenses can be allowed as no evidence for the same is presented. The out of books profit on the undisclosed sales will be Rs. 8,60,649/- (Rs. 98,68,470 - Rs. 90,07,821). Therefore, the addition made by the Assessing Officer amounting to Rs. 98,68,470/- u/s 68 of the Income Tax Act stands modified to Rs. 8,60,649/- of undisclosed profit on undisclosed cash sales and accordingly Ground Nos. 2 & 3 of appeal are partly allowed."*

6. Looking to the facts of the present case as a substantial addition has been deleted by the Id. CIT(A) and remaining addition is sustained on the estimate basis. Therefore, we direct the Assessing Officer to delete the penalty.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 25/10/2022.

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 25/10/2022**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**ASSISTANT REGISTRAR**