

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.6968/DEL/2017
[Assessment Year: 2009-10]**

M/s ACIL Ltd. 62A-63 UGF, WTC Building, Babar Road, Connaught Place, New Delhi-110001 PAN-AAACCA7535P	Vs	ACIT, Central Circle-30 New Delhi
Assessee		Revenue

Assessee by	None
Revenue by	Sh. Kanv Bali, Sr. DR

Date of Hearing	24.11.2022
Date of Pronouncement	06.12.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of Ld. CIT (Appeals)-30, New Delhi, dated 28.09.2017 for the Assessment Year 2009-10.

2. The grounds of appeal read as under:-

“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 of Rs.5,98,074/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case.

2. That the Ld. CIT(A) erred in not considering the detailed submissions dated 22.05.2017.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in imposing

penalty of Rs.5,98,074/- u/s 271(1)(c) is bad in law and against the facts and circumstances of the case.”

3. Brief facts of the case leading to the levy of penalty are that in this case the Assessing Officer made addition of Rs.1,64,05,766/- on account of bogus purchases. Upon assessee's appeal, the Ld. CIT(A) in his appellate order held that the whole amount cannot be added to the income because the payments were made through banking channels. The transactions were found to have been supported bank accounts. He directed the Assessing Officer to apply net profit ratio. As a result of this order, the assessee was granted relief of Rs.1,44,12,186/- and the addition was reduced to Rs.19,93,580/-. On this addition, penalty u/s 271(1)(c) was also levied and the same was sustained by the Ld. CIT(A) for an amount of Rs.5,98,074/-.

5. Against this order, the assessee is in appeal before us.

6. We have heard the Ld. DR and perused the record. None appeared on behalf of the assessee despite several notice. Hence, we proceed to adjudicate the issue by hearing the Ld. DR and perusing the records. We note that as against the addition of Rs.1,64,05,766/- on account of bogus purchases. The Ld. CIT(A) held that only net profit rate on this amount is to be disallowed. Hence, Ld. CIT(A) granted a relief of Rs.1,44,12,186/- and the addition was reduced to Rs.19,93,580/-. The Revenue did not file appeal against the huge relief of Rs.1,44,12,186/- granted by the Ld. CIT(A).

7. As regards the levy of penalty is concerned, penalty u/s 271(1)(c) of the Act is leviable for furnishing of inaccurate particulars of income or

concealment of income. On the facts and circumstances of the case present here, Ld. CIT has not found the purchases to be bogus as held by Assessing Officer but has directed to disallow only the net percentage rate. In these circumstances, it cannot be said that assessee deserves to be visited with the rigorous of penal provisions of section 271(1)(c) of the Act. In our considered opinion, the assessee's conduct is not contumacious in the light of the above order of the Ld. CIT(A) to warrant levy of penalty. This is coupled with the fact that no adjustment/disallowance whatsoever has been considered for the sales as no sales can be done without purchases. In concluding that the assessee need not to be visited with the rigorous of penalty, we find support from the judgment of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd vs State Of Orissa (1972) 83 ITR 26(SC) wherein the proposition laid down was that if the assessee's conduct is not found to be contumacious, the authority may not levy of penalty. In the background of the aforesaid discussion, we set-aside the order of the Ld. CIT(A) and direct to delete the penalty in this case.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 06th December, 2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 06.12.2022.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi