

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,**  
**MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI M. BALAGANESH, AM**

आयकर अपील सं/ I.T.A. No.2560/Mum/2022  
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT, Circle-1 O/o The DCIT, Circle-1, 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Kalyan West-421301.	<b>बनाम /</b> Vs.	Shri Shyam K. Gyanchandani F-212, Udyog Vihar, Near Vithal Wadi, Olhasnagar- 421003.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAZPG6917H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Vaibhav Jain	

सुनवाई की तारीख / Date of Hearing: 13/12/2022  
घोषणा की तारीख /Date of Pronouncement: 23/12/2022

**आदेश / ORDER**

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

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 04.07.2022 for the assessment year 2010-11.

2. None appeared for the assessee. However, on perusal of the grounds of appeal, we note that only grievance of the revenue is against the action of the Ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts of the case as noted by AO are that the assessee had filed the return of income of Rs.7,34,196/- on 15.10.2010. Later, the AO noted that he received from Sales Tax Department, Maharashtra that the assessee has dealt with entry operator M/s. Rumeet Enterprises and has obtained bogus purchase bills to the tune of Rs.2,36,37,328/-. Therefore, he reopened the assessment and noted that the assessee is



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running a proprietary concern (M/s. S. K. Enterprises) which is engaged in the business of trading in LDO and Furnace Oil. And during the year under consideration, the assessee has shown sales of Rs.10,80,70,656/- and shown net profit of Rs.8,30,690/-. The AO asked the assessee to explain the purchase made from M/s. Rumeet Enterprises. Pursuant to the same, the assessee replied that he is a trader and have made all purchases from the said M/s. Rumeet Enterprises and payments through accounts payee cross-cheque and have sold the goods and offered the income on it. And he also attached along with the reply copy of the stock register which according to him shows the movement of goods. And therefore he prayed that no adverse inference should be drawn against him for transaction with M/s. Rumeet. The AO in the assessment order acknowledges that the assessee had furnished ledger of M/s. Rumeet Enterprises in his books of accounts and also filed copies of the delivery challans. And the assessee also brought to the notice of the AO that he purchased directly goods from the refinery/resellers and sells mostly to the end users. However, according to the AO even though these documents were filed before him, the genuineness of the transaction made by the assessee with M/s. Rumeet couldn't be verified. Therefore, based on the report of Maharashtra Sales Tax Department he doubted the genuineness of the purchases made from M/s. Rumeet Enterprises and added the entire purchase amount to the tune of Rs.2,36,37,328/- to the income returned by the assessee (Rs.7,34,196/-). Thus total income of the assessee was assessed to the tune of Rs.2,43,71,520/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who restricted



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the addition to Rs.59,09,332/- which is 25% of the total bogus transaction. Thereafter, the assessee and revenue filed an appeal before this Tribunal; and the Tribunal vide order dated 13.09.2017 (ITA. No.5446/Mum/2016) had again restricted the addition to Rs.29,54,666/- which was 12.5% of the total bogus transaction of Rs.2,36,37,828/-. Thereafter, the AO initiated the penalty proceedings u/s 271(1)(c) of the Act and issued show cause notice to the assessee dated 13.03.2018 which was served upon the assessee on 17.03.2018. According to the AO, the assessee failed to respond to the show cause notice. So he was pleased to levy penalty of Rs.9,12,991/- by order dated 21.03.2018. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC which was pleased to delete the same by passing the impugned order. Aggrieved by the action of the Ld. CIT(A)/NFAC deleting the penalty, the revenue is before us.

**4.** We have heard the Ld. DR and perused the records. We note that the AO while assessing the income of the assessee for AY. 2010-11 based on report of the Maharashtra Sales Tax Department against M/s. Rumeet Enterprises that it was providing accommodation entries added the entire purchases made by assessee from it to the tune of Rs.2,36,37,828/-. On appeal, the Ld. CIT(A) restricted the same to 25% of purchases and thereafter this Tribunal restricted it further to 12.5% i.e. of Rs.29,54,666/- vide order dated 13.09.2017. Thereafter, the AO has levy penalty u/s 271(1)(c) of the Act on the ground that the assessee had filed inaccurate particulars of income and levied penalty of Rs.9,12,991/- which has been deleted by Ld. CIT(A). We note that the AO has imposed penalty u/s 271(1)(c) of the Act on the estimated



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income made by him,[ which has been restricted by the Tribunal, supra] on the alleged fault of assessee filing of inaccurate particulars of income. Penalty u/s 271(1)(c) of the Act is liable to be imposed only where the assessee has concealed its particulars of income or for furnished inaccurate particulars of income. Adhoc-addition/estimated addition cannot attract the imposition of penalty u/s 271(1)(c) of the Act because the same can neither be *concealment of particulars of income* nor *furnishing of inaccurate particulars of income*. Therefore, we completely agree with the Ld. CIT(A) who has referred to plethora of the judicial precedents which is on the same ratio as afore-stated; Therefore the Ld. CIT(A) has rightly deleted the penalty, which impugned action of the Ld. CIT(A) does not require any interference from our side. So the revenue appeal stands dismissed.

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

Order pronounced in the open court on this 23/12/2022.

Sd/-

(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/12/2022.  
Vijay Pal Singh, (Sr. PS)



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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
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