

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

**BEFORE SHRI AMIT SHUKLA, JM, &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1508/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2012-13)

DCIT- 32(1), R. No. 702, 7 th floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400 021	बनाम/ Vs.	M/s Adinathya Enterprises, Shop No. 6, Harjas CHS Ltd. Divine Home Colony, Borivali (W)m Mumbai-400 103
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAQFa1188F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Manoj Sinha, Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Mahesh Dumane, Ld. AR
सुनवाईकीतारीख/ Date of Hearing	:	26.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	30.11.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the revenue against the impugned order dated 22.12.2021, passed by Ld. National Faceless Appeal Centre (NFAC), Delhi in relation to penalty proceedings u/s 271(1)(c) for AY 2012-13.

2. The revenue is aggrieved by deletion of penalty of Rs. 40,000/- levied u/s 271(1)(c) on addition of Rs. 1,15,516/- being GP @ 12.5% of the total bogus purchase upheld in the quantum proceedings by Ld. CIT(A).

3. The facts in brief are that, assessee is engaged in the business of builder and developer. During the assessment proceedings, AO had disallowed a sum of Rs. 9,24,124/- on account of alleged bogus purchase made from 2 parties, on the basis of certain information from VAT department. The purchases were disallowed on the basis of list of some alleged suspicious dealers published by Sales Tax Department wherein dealers have been defaulted in payment of VAT. Before the AO, assessee has submitted supporting material evidences and invoices and the payments were made through account payee cheques. Apart from that, assessee has also furnished PAN numbers of the suppliers, copy of ledger account of the parties, details of material supplied which has been utilized for works executed and other evidences. However, the AO simply based on the information had treated the purchases as bogus.

4. Ld. CIT(A) in the quantum proceedings vide order dated 01.02.2018 had held that 12.5% of GP rate should be applied on the alleged bogus purchases, i.e. Rs. 9,24,124/-. Accordingly, addition of Rs. 1,15,516/- was sustained.

5. Now the AO has levied the penalty u/s 271(1)(c) for concealing the particulars of income and levied penalty of Rs. 40,000/-. Ld CIT(A) following the certain decisions of the Tribunal wherein on similar estimation of GP on purchases, penalty have been deleted.

6. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material placed on record. We find that AO has simply levied the penalty on the GP rate confirmed on purchases without analyzing the explanation and the material which were already on record. Once the source of purchases were from the books of account and overall trading account was not disturbed and assessee has furnished various details to substantiate the purchases, then it cannot be held that the purchases are bogus. Purchases cannot be held to have been made outside books on which the charge of concealment of income can be levied. Otherwise also, the addition has been made

simply by estimating GP rate on the purchases and such estimation does not mean that there was any concealment of income which was found or detected, once the source of purchases were proved from various evidences as discussed above and the trading results have not been disturbed. Accordingly, we are of the view that Ld. CIT(A) has rightly deleted the penalty.

7. In the result, the appeal filed by the revenue stands **dismissed.**

Orders pronounced in the open court on 30th November, 2022.

Sd/-
 (S. Rifaur Rahman)
 Accountant Member

Sd/-
 (Amit Shukla)
 Judicial Member

मुंबई Mumbai; दिनांक Dated : 30/11/2022

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai