

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA No.1907 & 1908/Mum/2021
(Assessment year 2019-20)

Mukesh Shaligram Sharda 93/1, Brahman Ali, Guru Ashish Bldg Flat No.9, Near P R High School, Bhiwandi-421 302 PAN : AUFPS2113R	vs	Income-tax Officer, Ward-1(2), Kalyan, Mohan Plaza, Wayale Nagar, Khadak Pada, Kalyan (W)- 421 301
APPELLANT		RESPONDENT

Assessee represented by	Shri N.A. Kulkarni
Department represented by	Shri Abhishek Kumar – Sr AR.

Date of hearing	13/02/2023
Date of pronouncement	22/02/2023

ORDER

PER BENCH:

These appeals filed by the assessee **are** directed against the two different orders of the Commissioner of Income-tax (Appeal)-2, Thane [hereinafter called, Ld.CIT(A)] dated 26/10/2016 and order of the National Faceless Appeal Centre (NFAC), Delhi dated 21/09/2021 for the assessment years 2011-12 and 2010-11, respectively. Since common issue on identical facts is involved in both these appeals, therefore, for the sake of convenience, ITA No.1907/Mum/2021 is taken

as lead case for adjudicating this appeal and finding therein will be applicable to the other appeal filed by the assessee.

2. The solitary ground of the assessee pertains to confirmation of penalty under section 271(1)(c) for furnishing of inaccurate particulars of income. The fact in brief are that initially the appeal of the assessee filed against confirmation of penalty levied under section 271(1c) of the Act was dismissed by the ITAT, H-Bench, Mumbai in ITAs No.1908 & 1907/Mum/2021 in an ex parte order wherein assessee has not made compliance. Subsequently, the assessee filed miscellaneous application vide M.A.Nos.201/Mum/2022 & 202/Mum/2022 stating that no compliance could be made on the date of hearing of the case because of the expiry of one of the close relatives of the assessee. Thereafter, the miscellaneous application of the assessee was allowed vide order dated 27/12/2022 recalling the order under rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963.

3. The fact in brief are that during the course of assessment proceedings, the Assessing Officer had disallowed 100% of purchases made through three parties on the basis of the information received from the sales-tax department that those three parties were engaged in providing bills without supplying any good. However, the Ld.CIT(A) has estimated the quantum addition to the extent of 12.5% of purchases. Thereafter, the Assessing Officer has levied penalty of Rs.8,13,793/- under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The assessee filed appeal before the Ld.CIT(A) against levying penalty. However, the Ld.CIT(A) has dismissed the appeal the appeals of the assessee.

4. Heard both the sides and perused the materials on record. It is undisputed fact that impugned penalty was levied only on estimated addition. The Assessing Officer had made addition of entire bogus purchases, however, did not doubt the sales made against such purchases. We observe that the Tribunals in various decisions have held that where sales are not disputed, entire alleged bogus purchases cannot be disallowed and only the gross profit on the alleged purchases to be disallowed. After taking into consideration the various decisions of the Tribunal that no penalty under section 271(1)(c) is leviable on estimated additions and also after taking into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Krishi Tyre Retreading & Rubber Industries 360 ITR 580; the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Sangrur Vanaspati Mills Ltd 303 ITR 53 (P&H); and the decision of Hon'ble Gujarat High Court in the case of CIT vs Subhsh Trading Co Ltd 221 ITR 110 (Guj), we direct the Assessing Officer to delete the impugned penalty levied on estimated addition. Therefore, the appeal of the assessee is allowed.

ITA No.1908/Mum/2021

5. the facts and circumstances of the issue in this appeal are identical to the facts and circumstances of ITA No.1907/Mum/2021, the decision arrived at against the appeal in ITA No.1907/Mum/2021 shall apply mutatis mutandis to this appeal also.

6. In this result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 22/02/2023.

Sd/-	sd/-
(AMIT SHUKLA)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 22nd February, 2023

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प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Dy./Asstt. Registrar) ITAT, Mumbai