

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No.3188,3190 & 3192/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2009-10,2010-11 & 2011-12)

SAWAILAL BHATTI 161, 4 TH Floor, Panchshil Niwas, 5 th Floor Kamathipura, Mumbai-400008	<u>बनाम/</u> Vs.	ITO-20(3)(2) MUMBAI Matru Mandir, Parel, Mumbai- 400007
स्थायीलेखासं ./जीआइआरसं ./PAN No. AEMPB3718G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. Dhaval Shah
प्रत्यर्थीकीओरसे/ Respondent by	:	M/s. Deepika Arora- Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	30.03.2023
घोषणाकीतारीख / Date of Pronouncement	:	31.03.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the assesses against separate impugned order of even date, 19.10.2022 in relation to the penalty proceedings u/s 271 (1)(c) for the AY 2009-10, 2010-11 & 2011-12. On merits facts and issues involved in all the three appeals are common arising out of identical set of facts and

findings, therefore, same were heard together and appeal is disposed of by way of the consolidated order. In all the year the penalty has been levied on account of adhoc addition of GP rate on bogus purchases.

2. In the assessment order, the addition have been made by the AO on the basis of certain information received from Sales Tax authorities that assessee had made purchases from various suspicious parties. The Assessing Officer accordingly applied GP rate on adhoc basis at the rate of 12.5% of the bogus purchases and same was also confirmed by the Ld. CIT (Appeals). In Tribunal, in the quantum proceedings for the AY 2009-10 & 2011-12, the Tribunal has reduced the addition by holding that GP rate of 5% should be estimated. Accordingly, the disallowance has restricted to 5% while order dated 10.02.2023 pass in ITA No. 3189 & 3193/Mum/2022. In so far as, appeal for AY 2010-11 is concerned the same has been stated to be pending, even though hearing was concluded on 09.03.2023.

3. Be that as may be, on the perusal of the relevant finding, we find that the assessee had filed all the details of purchases and

corresponding sales had not been doubted. The sources of purchases are from the books and overall trading results have been accepted. Only allegation is that assessee has taken accommodation bills for the purchase of items to suppress the profits. Once, the addition has been made on adhoc and estimate which has been reduced by the Tribunal, then it cannot be held that there is any concealment of income so as to warrant any penalty u/s 271(1)(c), Accordingly, on merits the penalty is deleted.

3. In AY 2009-10 the Ld. Counsel submitted that, Ld. CIT(A) apart from that, deciding the issue on merits, has held that the appeal of the Assessee was barred by limitation by 3563 days and therefore, on this ground also, he has dismissed the appeal.

4. The Ld. Counsel submitted that, the assessee had discontinued the business due to paucity of funds and he was going through serious financial distress and he was struggling to satisfy the basic needs of his large family. It also impacted on his health and had very tough time in this period. Accordingly, he could not file the appeal in time. Thus, on this ground, appeal dismissed by the Ld. CIT(A) on the ground of delay should be set aside and

appeal should be decided on merits. Looking to the aforesaid circumstances and the fact that we have already deleted the penalty on merits, therefore dismissal of appeal on delay by the Ld. CIT (A) is rejected.

5. Accordingly, all the appeals filed by the Assesses are allowed.

Orders pronounced in the open court on 31st March, 2023.

Sd/-
(Prashant maharishi)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 31.03.2023

Ms.Urmila

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**