

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

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

आयकरअपीलसं./ I.T.A. No.285,286 & 284/Mum/2023
(निर्धारणवर्ष /Assessment Year: 2011-12 & 2013-14)

DY COMM OF INCOME TAX-5(3)(1) MUMBAI Room No. 573, 5 th Floor, Aayakar Bhavan, M.K.Road Mumbai 400020	बनाम/ Vs.	SHAILESH DESAI, LIQUIDATOR OF SANGHAVI INTERNATIONAL P.LTD 708, Raheja Centre, 7 th Floor, Nariman Point Mumbai-400021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAKCS7350N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	CA. Ekta Sanghavi
प्रत्यर्थीकीओरसे/ Respondent by	:	Deepika Arora-Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	28.03.2023
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 revenue against separate impugned order passed by NFAC Delhi, in relation to the penalty proceedings u/s 271(1)(c) for the AYs 2011-12 & 2013-14 and for quantum of appeal for the AY 2013-14.

2. In so far as the appeal for the AY 2011-12 is concerned, the revenue has challenged the deletion of penalty u/s 271(1)(c) of Rs. 1,47,59,597/- levied on account of alleged bogus purchases. The Ld. Assessing Officer based on search conducted in the case of **“Bhanwarlal Jain Group”** 03.10.2013 where in it was found that he was provided accommodation entry bogus bills etc. to many parties. AO noted that the Assessee has also taken accommodation entries for bogus purchases from some of the concerns of Bhanwarlal Jain Group who had issued bogus bills to the assessee. Assessing Officer noted that Assessee has taken accommodation entry of purchases amounting to Rs. 1,40,56,11,604/- from ten concerns of **Bhanwarlal Jain Group**. Accordingly, the AO worked out peak credit of entire purchases of Rs. 11,22,09,313/- and added the same as the bogus purchases.

3. In the first appeal, the Ld. CIT (A) restricted the disallowance at the rate of 3% of the total bogus amount, and accordingly addition was worked out at Rs. 4,44,33,197/- The AO has levied penalty u/s 271 (1) (c) for Rs.1,47,59,597/- on the amount which was confirmed by the Ld. CIT(A).

4. The Ld. CIT(A), has deleted the penalty on the ground that this Tribunal while order dated 21.08.2018 in ITA No. 3305/m/2017 has deleted the entire addition made an account of bogus purchases.

5. Before us, the copy of ITAT has been placed. We find that in the quantum of proceedings the Tribunal has deleted the addition which was sustained by the Ld. CIT (A). Once quantum has been deleted, no penalty u/s. 271(1)(c) can be levied. Thus, Ld. CIT (A) has rightly deleted the said penalty.

6. In so far as appeal for the AY 2013-14 which is the quantum appeal, the revenue has challenged the deletion of addition on account of bogus purchases made by the AO for sums amounting to Rs. 7,30,81,026/-, whereby AO has made addition by applying GP rate at the rate of 5.43% of the bogus purchases aggregating to Rs. 134,58,75,24/-. The Ld. CIT (A) following the ITAT order for AY 2011-12, ITA No. 3305 & 3375/m/2017 order dated 21.08.2018 deleted the addition.

7. After hearing both the parties and on perusal of the impugned orders, we find that the assessee before the Ld. CIT (Appeals) had

submitted various documents to prove the genuineness of the purchases, i.e., copy of the ledger account, purchase invoice, bank statement, stock register, copies of acknowledgement of income tax returns of the parties, copies of financial of the parties and other documents. The Assessee is engaged in the business of import export and manufacturing of cut and polish diamonds. Assessee has shown gross profit rate of 7.07%. There is no dispute that the AO has accepted the entire sales which included out of the purchases shown by the Assessee from these parties. The Tribunal in AY 2011-12 after detail discussion held that, when Assessee has already declared profit rate of 7.17% on the sales which is in consonance with the normal profit rate shown in the diamond industry, then there was no justification for further addition by AO. Here also, once the assessee is showing gross profit rate of 7.07% from the same purchases made by the said parties, we do not find any reason as to why extra 5.43% should be added. Thus, following the earlier precedence, we hold that, Ld. CIT (A) has correctly deleted the addition. **Accordingly, order of the Ld. CIT (A) is confirmed and the ground raised by the department is dismissed.**

8. In so far as, the appeal in relation to the penalty u/s 271 (1)(c) for the AY 2013-14 which is on account of penalty which AO has levied on the addition which has been made by the AO. Now that quantum addition has been deleted by the Ld. CIT (A) which has been confirmed by us in the foregoing paragraph, then penalty levied by the AO is also deleted.

9. **Accordingly, penalty levied by the AO is deleted.**
Consequently appeal of the revenues is dismissed.

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**