

IN THE INCOME TAX APPELLATE TRIBUNAL

“G” BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &

SHRI PRASHANT MAHARISHI, AM

आयकरअपीलसं./ I.T.A. No.2151/Mum/2022

(निर्धारणवर्ष / Assessment Year: 2010-11)

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| ITO, WARD-3(2). 2 nd Floor, Rani mansion, Murbad Road, Kalyan Maharashtra- 421301 | बनाम/ Vs. | SHRI SAI WORKS THANE. 02, Ground Floor, Radhashri Society, Savarkar Road, Dombivli (E) Thane Maharashtra- 421201 |
| स्थायीलेखासं ./जीआइआरसं ./PAN No ABBFS0588D | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | None |
| प्रत्यर्थीकीओरसे/ Respondent by | : | Shri Ram K. Kedia, Sr. AR. |
| सुनवाईकीतारीख/ Date of Hearing | : | 03.04.2023 |
| घोषणाकीतारीख / Date of Pronouncement | : | 11.04.2023 |

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the Revenue against order dated 15.06.2022, passed by NFAC Delhi, in relation to the penalty proceedings u/s. 271(1)(c) for the AY: 2010-11.

2. The revenue is aggrieved by the deletion of penalty of Rs. 1,15,229/- levied by the AO, on account of GP addition on alleged unproved purchases of Rs. 9,47,471/-.

3. The assessee is engaged in the business of Engineering and Electrical contracts, labour contracts, etc. Earlier the assessee's case was completed u/s. 143(3) r.w.s 147, vide order dated 13.08.2014, determining the total income at Rs. 11,92,430/- as against the return income of Rs. 2,4,959/-.

4. The assessee's case was re-opened again u/s 147 on the basis of information received from Sales Tax department Mumbai, that some parties were involved in providing bogus purchase bills and assessee has also shown purchases from them. Thus, it was noted that assessee was also one of the beneficiary who has availed accommodation entry of purchases of Rs. 9,47,471/- from various parties as per the detailed mentioned in the impugned penalty order. The AO in the assessment has made addition of entire purchases of Rs. 9,47,471/-. However, the Ld. CIT (A) in quantum proceedings has sustain 25% of the total addition, i.e., Rs. 2,36,868/- .

5. Accordingly, penalty has been levied by the AO for concealment of income on the amount sustained by the Ld. CIT (A) at Rs. 1,15,229/-.

6. The Ld. CIT (A), had deleted the penalty after referring to the various Tribunal decisions, wherein on similar facts the penalty has

been deleted in the cases where addition has been made on adhoc estimation of GP rate on bogus purchases.

7. After hearing both the parties, and on perusal of the impugned order, it is seen that in the quantum proceedings the additions which has been sustained was purely made on adhoc basis. Once the source of purchases have been shown from the books and the addition has been made/sustained purely on adhoc basis by estimating GP rate on such purchases, then it cannot lead to inference of concealment of income an accordingly, penalty levied by the AO has rightly deleted by the Ld. CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Orders pronounced in the open court on 11th April, 2023.

Sd/-

(Prashant Maharishi)

Accountant Member

Sd/-

(Amit Shukla)

Judicial Member

मुंबई Mumbai;दिनांक Dated : 11.04.2023

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**