

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.279/M/2023
Assessment Years: 2010-11**

Income Tax Officer- 34(1)(1), Room No.215, 2 nd Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Mumbai – 400 051	Vs.	Shri Asit Pareshkumar Desai, 506, B-Wing, 225 Nariman Road, Vile Parle East, Mumbai – 400 057 PAN: AABPD2828E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shyam Saboo &
Shri D.C. Saboo, A.R.

Revenue by : Shri Manoj Kumar Sinha, D.R.

Date of Hearing : 29 . 03 . 2023

Date of Pronouncement : 20 . 04 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant Income Tax Officer-34(1)(1), Mumbai (hereinafter referred to as the Revenue) by filing present appeal sought to set aside the impugned order dated 16.09.2022 passed by the National Faceless Appeal Centre (NFAC) the Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] deleting the penalty levied by the Assessing Officer (AO)

under section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2010-11 on the grounds inter-alia that:

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting penalty levied u/s 271(1)(c) without appreciating that the penalty was levied in respect of quantum addition confirmed by Hon'ble ITAT on account of purchases from parties debited in the books of account which proved bogus on the basis of information received from external sources in the nature of law enforcement agencies and other facts and material on record wherein the onus was on the assessee to establish the genuineness of such purchases by production of such parties before the assessing officer and the assessee failed to discharge his onus.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting penalty merely because the addition was confirmed on estimated basis, though the estimation was necessitated because the books of account were proved false as purchases from bogus parties were debited therein.

3. The appellant craves leave to amend or alter or add a new ground which may be necessary.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed by the Assessing Officer (AO) under section 143(3) read with section 147 of the Act at the total income of Rs.7,42,140/- by way of making addition of Rs.3,68,305/-, penalty proceedings have been initiated under section 271(1)(c) of the Act by way of issuance of notice under section 274 read with section 271(1)(c) of the Act for furnishing the inaccurate particulars of income leading to the concealment of income. Declining the contentions raised by the assessee, the AO proceeded to levy the penalty to the tune of Rs.1,00,785/- @ 100% of the tax sought to be evaded.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the penalty by allowing the appeal filed by the assessee. Feeling aggrieved with the impugned

order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. D.R. for the Revenue challenging the impugned order passed by the Ld. CIT(A) relied upon the penalty order passed by the AO and contended that when bogus purchase bills have been relied by the assessee himself the factum of furnishing inaccurate particulars stood prove and impugned order passed by the Ld. CIT(A) is liable to be reversed.

6. However, on the other hand, the Ld. A.R. for the assessee contended that the issue as to levying penalty in case of bogus purchases has already been decided by the co-ordinate Bench of the Tribunal in numerous cases and as such the same is covered and relied upon the decision of the Tribunal in case of Shri Ajay Loknath Lohia, I.T.A. No. 2998/Mum/2017 for AY 2009-10 order dated 05.10.2018.

7. Undisputedly penalty in this case has been levied by the AO on the basis of addition made by the AO on account of bogus purchases of Rs.3,68,305/- made by the assessee during the year under assessment. It is also not in dispute that the assessee being into the business of trading in various types of articles like rubber goods, hardware etc. was under the scanner on the basis of

information received from the Sales tax Department, Government of Maharashtra qua bogus purchase bills supplied by certain persons without making any delivery of actual goods. As per information received it has come on record that the assessee has availed bogus purchase bills from various hawala dealers during the year under consideration. Ultimately on the basis of material available on record the AO proceeded to make addition of Rs.3,68,305/- being 25% of the bogus purchases of Rs.14,73,272/- and thereby framed the assessment under section 143(3) read with section 147 of the Act. During the quantum proceedings assessment order has been confirmed by the Ld. CIT(A) in appeal, which has been accepted by the assessee.

8. In the backdrop of the aforesaid facts and circumstances of the case, we are of the considered view that when entire addition in this case is based on the basis of estimation and guess work without making any independent enquiry by the AO if alleged bogus purchases were made by the assessee rather entire assessment is based upon the information received from the Sales tax Department, Government of Maharashtra, the provisions contained under section 271(1)(c) of the Act are not attracted. When the AO has not applied his mind while framing the assessment rather relied upon the information received from the Sales tax Department, Government of Maharashtra, no evidence has come on record if any such furnishing of inaccurate particulars of income by the assessee has been made. In these circumstances, penalty levied by the AO is not sustainable in the eyes of law. Co-ordinate Bench of Tribunal in case of Shri Ajay Loknath Lohia, I.T.A. No. 2998/Mum/2017 for the AY 2009-10 vide order dated 05.10.2018 has decided the

identical issue levying the penalty under section 271(1)(c) of the Act in case of bogus purchases, in favour of the assessee by returning following findings:

“Having heard both sides, we find merit in the arguments of the assessee for the reason that although the AO has estimated 25% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The AO never disbelieved information filed by the assessee, but the proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on ad hoc basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, we are of the considered view that mere ITA 2998/Mum/2017 disallowance of purchases on ad hoc basis does not tantamount to wilful furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961. Hence, we are of the considered view that the AO was erred in levying penalty u/s. 271(1)(c) of the Act. Accordingly we direct the AO to delete penalty levied u/s. 271(1)(c) of the Act.”

9. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A) deleting the penalty levied by the AO under section 271(1)(c) of the Act. Hence, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 20.04.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.04.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.