

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

**BEFORE SHRI. AMIT SHUKLA, JM &  
MS. PADMAVATHY S, AM**

आयकरअपीलसं./ I.T.A. No.535,536,537,538 & 539/Mum/2023  
(निर्धारणवर्ष / Assessment Year 2004-05,2005-06,2007-  
08,2008-09 & 2009-10)

<b>Reshma Enterprises Mumbai,</b> 282, Kilachand Mansion, Kalbadevi Road, Mumbai- 400002	<b>बनाम/ Vs.</b>	<b>Income Tax Officer 18(3)(2) Mumbai,</b> Room No. 607, 6 <sup>th</sup> Floor, Earnesh House Nariman Point Mumbai- 400081
स्थायीलेखासं ./जीआइआरसं ./PAN No. <b>AAAFR7937B</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Mohammed Anas Siddique
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Mahita Nair Sr. AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	03.05.2023
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	04.05.2023

आदेश / O R D E R

**Per Bench:**

The aforesaid appeals have been filed by the Assessee against separate impugned order of different dates passed by the NFAC Delhi, in relation to the penalty proceedings u/s. 271(1)(c) for the A.Ys: 2004-05, 2005-06, 2007-08, 2008-09 & 2009-10. The common issue involved in all the appeals his levy of penalty u/s.

271(1)(c) on estimated gross profit of 5% on alleged un proved purchases. The penalties levied in all the years are as under:

- AY: 2004-05 = 84,042/-,
- AY: 2005-06 = 31,791/-,
- AY: 2007-08 = 57,454/-,
- AY: 2008-09 = 2,8,410/-,
- AY: 2009-10 = 2,23,049/-.

Since, the facts and issues in all the years are similar arising out of identical set of facts and the orders of the authorities bellow, therefore, same where heard together and have been disposed of by way of the consolidated order. In all the years the facts in briefs are that the Assessee firm deals in interlining cloth and trading in canvass.

2. Here in this case the assessments were for AY: 2004-05, 2005-06, 2007-08 were reopened u/s. 147/148 on the ground that survey action 143A was conducted in group concern of the assessee on 13.02.2009, wherein it was found that this group concerns were engaged in getting accommodation purchase bills. From the materials collected during the survey action it was found that,

Assessee has obtained purchase bills from certain parties, which were providing accommodation purchase bills.

3. In so far as appeals, for the AY 2008-09 and 2009-10 are concerned, same were regular assessment based on similar observation given in the finding of survey action. The Ld. AO in the assessment orders has added the entire purchases as unexplained investment u/s. 69C for the various assessment years. The details of such additions are as under:

- AY: 2004-05 = 53,06,985/-,
- AY: 2005-06 = 20,07,549/-,
- AY: 2007-08 = 33,83,698/-,
- AY: 2008-09 = 1,34,89,341/-,
- AY: 2009-10 = 1,44,36,924/-.

4. In the quantum proceedings the Ld. CIT (A) confirmed the addition on account of alleged unproved purchases by estimating gross profit 10% on such purchases. In the second appeal, the Tribunal has restricted the addition by estimating the gross profit @ of 5% on the alleged unproved purchases.

5. Now, AO has levied penalty u/s. 271(1)(c), on estimated profit of 5% of the disputed purchases. Before the, AO during the penalty proceedings the Assesses explanation and submissions has as under:

*“ 1. At the outset, it is submitted that the penalty proceedings are initiated only for the addition made by estimating Gross Profit o 5% on the alleged bogus purchases from dealers who are listed as "Hawala" dealers by the Sales Tax authorities.*

*2. Our clients have always categorically held that purchases from these parties are genuine and to prove and lead evidence of these being genuine purchases, they interalia furnished the following papers/ documents.*

*i) Details of Purchases and Sales giving full names and addresses of all the parties (which included purchases from the alleged bogus party also) along with the aggregate value of annual transactions.*

*ii) Detailed inventory of Opening and Closing Stock.*

*iii) Copies of delivery challans and purchase bills of the alleged bogus parties.*

*iv) Ledger accounts of the alleged bogus party duly confirmed by them.*

*v) Statement of payments made to the alleged bogus party along with copy of bank statements evidencing payments made.*

*vi) Certificates from the appellants bankers confirming payments made to the alleged bogus parties.*

*vii) A detailed quantitative statement showing disposal of purchases from the alleged bogus party by giving corresponding sales details along with copies of sales bills.*

*15. Hence, in view of the fact that though purchases are made and payments for the same are made by account payee cheques, and the material so purchased is sold, it cannot be inferred that no purchases are made and addition made to the returned income tantamount to concealment of any facts or submission or furnishing of inaccurate particulars of income to warrant levy of penalty under section 271(1)(c) of the Income-tax Act. Hence the penalty proceeding initiated may please be annulled."*

6. However, this explanation has been rejected simply on the ground that that assessee could not prove the genuineness of the purchases. The Ld. CIT (A), after distinguishing the judgment cited by the Assessee held that there are various judgments where the addition is based on estimate concealment penalty can be levied.

7. Before us the Ld. DR. relied upon or decision of **Hon'ble Allahabad High Court in the case of TCIT Vs. Sandeep Chandak reported in 405 ITR 648 and one selfy of Hon'ble Supreme Court in the case of JMJ essential Oil Company Vs. Ld.CIT** wherein, the SLP was dismissed the order of High Court where the Assessee has failed to established genuineness of unaccounted

income found in garb of cash sales in accounts and there were sufficient material on record to show that cash sales were made outside books. In the case before the Hon'ble Allahabad High Court (Supra) the issue related to admission of undisclosed income in the statement made in the course of search on which penalty u/s. 271 AAB was levied. None of the judgments cited by the Ld. DR has any remote connection with the facts of case of the Assessee nor the principle nor ratio-decendi. Thus, the judgments do not help the case of the department.

8. After considering the relevant finding given the impugned order as well as the submissions made by the Ld. Counsel for the Assessee and submissions made by the DR, we find that, ultimately penalty has been levied by estimating the gross profit @ of 5% on alleged bogus purchases. The assessee's explanation in all years in the course of the penalty proceedings have been that, it has furnished the entire details of purchases and sales along with inventory of opening in closing stock, delivery challans and purchase bills, ledger accounts confirmed by the parties, statement of payment through banking channels and details quantitative

statement of the purchases and the corresponding sales along with the copies of sales bills. None of these evidences or documents or the quantitative details or the corresponding sales has been found to be incorrect or trading results have been disturbed. Simply based on survey action in group concerns, who in turn have taken some accommodation entries or purchase bills entire adverse inference has been drawn. It is not a case that in the course of any enquiry conducted by the AO, parties have denied the transaction or it has been found that assessee has made these purchases outside the books. The sources of purchases are from the books and through banking channels and quantitative details of purchases have been accepted. Once the quantitative details of purchases and the corresponding quantitative sales have not been disturbed and has been accepted, then there cannot be any case for levy of penalty on account of alleged bogus purchases. Ultimately, the appellate authorities have found that at the most there could be element of suppression of gross profit on the purchases, but such estimated addition alone cannot be the basis for levy penalty u/s.271(1)(c). The penalty proceedings being separate and distinct from the assessment proceedings and the assessee can explain on the basis

of same material facts on record that he has not concealed any particulars of income or furnished any inaccurate particulars of income. The explanation of the Assessee and all the evidences filed before the authorities below have neither been rebutted nor has been found to be incorrect or assessee has failed to substantiate the explanation. Thus, levy of penalty on such estimated gross profit cannot be sustained and accordingly, in all the years penalty levied by the AO and sustained by the CIT(A) is directed to be deleted.

9. In the result, grounds raised by the assessee in all the years are allowed. The appeals of the Assessee are allowed.

*Orders pronounced in the open court on 4<sup>th</sup> May, 2023.*

Sd/-  
**( Padmavathy S )**  
**Accountant Member**

Sd/-  
**(Amit Shukla)**  
**Judicial Member**

मुंबई Mumbai;दिनांक Dated : 04.05.2023

*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**