

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

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

**ITA No.460/M/2023  
Assessment Year: 2009-10**

M/s. Anant Plastic Industries, Ground Floor, Seksaria Industries Estate, New Complex, Chincholi Bunder Road, Malad (West), Mumbai – 400 064 <b>PAN: AAHFA6976E</b>	Vs.	Income Tax Officer, Ward 30(1)(1), Pratyakshakar Bhavan, C-13 Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Haresh P. Shah, A.R.  
Revenue by : Shri Manoj Kumar Sinha, D.R.

Date of Hearing : 19 . 04 . 2023  
Date of Pronouncement : 28 . 04 . 2023

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Anant Plastic Industries (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 23.12.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) confirming the penalty of Rs.1,84,720/- levied by the Assessing Officer (AO) under section 271(1)(c) of the Income Tax Act, 1961

(for short 'the Act') qua the assessment year 2009-10 on the grounds inter-alia that :-

*“1. The Ld. CIT (A) erred in confirming Penalty of Rs. 1,84,720 levied by AO U/S. 271 (1) (e).*

*2. The Ld. CIT (A) failed to appreciate that penalty was levied on addition amount to Income of Rs. 5,97,792 which itself was based on estimation hence not a case of Penalty U/S. 271 (1) (c).*

*3. The Appellant craves leave to add, alter or amend the above Grounds of Appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed under section 143(3) read with section 147 of the Act by making addition of Rs.5,97,792/- on account of non genuine purchases to the extent of 6% of the total non genuine purchases of Rs.99,63,200/- which was confirmed by the Ld. CIT(A) as well as by the Tribunal, penalty proceedings have been initiated by the AO under section 271(1)(c) of the Act. Declining the contentions raised by the assessee the AO proceeded to levy the penalty of Rs.1,84,720/- @ 100% of the income sought to be evaded.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the penalty levied by the AO by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the 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. Undisputedly entire addition in this case was made by the AO as well as the Ld. CIT(A) on the basis of guess work and estimation merely on the basis of some alleged information received from the Sales tax Department that the assessee has taken bogus purchase bills without having taken any delivery of goods, without applying their mind. It is also not in dispute that the AO has not examined the books of account of the assessee nor has reached the definite conclusion that the bills for purchasing the goods relied upon by the assessee are bogus but simply made the addition on the basis of information received by the Directorate General of Income Tax (Investigation) [DGIT(Inv.)], from Sales Tax Department of Maharashtra. It is also not in dispute that during the second round of appeal the Tribunal has restricted the addition again on the basis of estimation to 6% of the alleged bogus purchases.

6. In the backdrop of the aforesaid undisputed facts when we examine the mandate of provisions contained under section 271(1)(c) of the Act the Assessing Authority must have reached the definite conclusion on the basis of independent enquiry that such and such bills were found non genuine/bogus and the assessee has thereby furnished inaccurate particulars of income during the assessment proceedings to conceal his income but no such findings have come on record. 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, ITA

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.”*

7. We are of the considered view that where the entire addition is made on the basis of estimation and guess work by the AO, the Ld. CIT(A) as well as the Tribunal provisions contained under section 271(1)(c) of the Act are not attracted. Hence, penalty levied by the AO and confirmed by the Ld. CIT(A) is not sustainable and as such is ordered to be deleted.

8. Resultantly, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on 28.04.2023.**

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

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

Mumbai, Dated: 28.04.2023.

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.