

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA No. 813/Mum/2023

(A.Y.2009-10)

ITO-17(1)(2)(1) 1 st , Floor, room No. 104, Kautilya Bhavan, G. Block, BKC, Bandra(E) Mumbai 400051	Vs.	Chetan Shashikant Shah 1 st , Floor, Office No. 101, 33, Dariyastan Street, Masjid, Mumbai, Mandvi S.O 400003
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACPS9153Q		
Appellant	..	Respondent

Appellant by :	Shri. Rajesh S. Shah
Respondent by :	Shri. Krishna Kumar

Date of Hearing	30.05.2023
Date of Pronouncement	31.05.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

Fact in brief is that return of income declaring total income of Rs 3,22,146/- was filed on 21.09.2009. The return of income tax processed u/s 143(1) of the Income Tax Act (hereinafter “the Act”) . The case of the assessee was reopened by issuing the notice u/s 148 of the Act dated 24.01.2014 on the basis of information received from Sale Tax Authority that some dealers were indulged in providing accommodation entries in the form of issuing bogus sales bills tax invoices without supplying the goods. The Assessee was one of the beneficiaries who have shown purchases to the amount of Rs 60,06,037/- from 8 parties whose name appeared in the list of such dealers as per the official website of the Sales Tax Department

Maharashtra. The AO has treated the transaction made with the said parties as non-genuine and estimated gross profit at 12.5% of such purchases shown from the alleged hawala parties. Therefore, the total addition to the amount of Rs 7,50,755/- was made to the total income of the assessee. In the appeal, the Ld. CIT(A) has reduced the rate of addition to 8% of gross profit as against rate of 12.5% estimated by the AO. The AO has also initiated penalty u/s 271(1)(c) of the Act. Vide order u/s 271(1)(c) of the Act dated 07.01.2022, the assessing officer has levied penalty of Rs 2,13,664/- for furnishing the inaccurate particular of income.

2. Aggrieved assessee filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee. The Ld. CIT(A) has allowed the appeal of the assessee after placing reliance on the decision of ITAT Mumbai in the case of Mr Yashraj Films Pvt. Ltd. v/s ACIT Circle 29 vide ITA 7519/Mum/2013 dated 08.07.2015 and ITAT Mumbai in the case of DCIT vs M/s Rishab Impex Gulabdas & Co. ITA no 93/Mum/2011 dated 10.04.2015 wherein the held that on the proposition that penal action cannot be taken on the estimated addition.

4. Heard both the sides and perused the material on the record. We consider that determination of income of assessee on certain estimate was not sufficient to conclude that assessee had concealed his income. It is not appropriate to levy penalty merely because of addition made on the basis of estimated profit. We have also considered the decision of Hon'ble Bombay High Court and Tribunal in the case of CIT vs Aarkey Sarree Museum (1990) 53 taxmann.com 416(Bom) and the decision of Hon'ble Bombay High Court in the case of CIT vs Yusuf Abdulah Patel (1994) 75 taxmann.com 614 and decision of ITAT Mumbai in the case of ETCO Industries Pvt. Ltd. Vs ACIT (2015) 61 taxmann.com 470 (Mum) wherein held that no penalty levied on addition merely made on estimate basis. Therefore, it is undisputed fact that in this case the assessing officer has made addition on estimate basis and did not doubt the sales made against such purchases. After taking into consideration various decision of

Hon'ble High Courts and Tribunal, we do not find any reasons to interfere in the decision of the Ld. CIT(A). In the result appeal of the revenue is stand dismissed.

Order pronounced in the open court on 31.05.2023

Sd/-

(Amit shukla)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 31.05.2023

Aniket Singh Rajput: Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.