

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1930/Mum/2021
(A.Y: 2011-12)

Jeni Abhay Shah 902, A Wing, Bldg No.88, R.S. Money, Supermarket, Vrushali Apartments, Tilak Nagar, Mumbai – 400089.	Vs.	ITO – 27(1)(5) Vashi Rly Station Navi Mumabi – 400701.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AXVPS3431M		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri S.N.kabra.Sr.DR

Date of Hearing	01.06.2022
Date of Pronouncement	06.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of CIT(A)- National Faceless Appeal Centre (NFAC) Delhi passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

- 2 -

1. *The Ld. AO erred on facts and in law in levying penalty u/s 271(1)(c) on adhoc and on unverified presumptive addition of alleged bogus purchases.*
2. *The NFAC has not given proper and sufficient opportunity of hearing and submissions and passed the impugned order during full lockdown of covid pandemic, despite the directions of Hon'ble the Supreme Court of India.*

2.The brief facts of the case are that, the assessee is an individual and derives income from business. The assessee has filed the return of income for the A.Y 2011-12 on 03.09.2011 disclosing a total income of Rs. 2,49,500/-. The A.O has received the information from DGIT(Inv) that the assessee has obtained the bogus purchases bills to the extent of Rs. 39,82,532/- from ten parties. Therefore the A.O has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance to notice the assessee has filed the details and submissions. The A.O has considered the information filed in the course of hearing proceedings and to test check the genuineness of the purchases has issued notice u/s 133(6) of the Act on the parties and the said notices were returned un-served by the postal

authorities. The AO has called for additional information and issued show cause notice to produce the principle officers of the parties but the assessee failed to produce the parties and the A.O. has doubted the genuineness of the purchases. Whereas, the AO considering the facts observed that the profit element has to be estimated on such alleged purchases and made addition @ 12.5% which worked out to Rs. 4,97,816/- and passed the order u/s 143(3) r.w.s 147 of the Act.

3. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act, Since assessee has entered into bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and the assessee has not filed the reply/explanations in the penalty proceedings. Finally, the A.O has levied penalty based on the addition made in the scrutiny assessment, which worked out to Rs.24,612/- and passed the order u/s 271(1)(c) of the Act dated 28-03-2019.

4. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered

- 4 -

the grounds of appeal and the submissions of the assessee but the confirmed the action of the A.O in levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

5. At the time of hearing, none appeared on behalf of the assessee. Contra, the Ld. DR supported the order of the Ld. CIT(A).

6. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the assessment order under section 143 r.w.s 147 of the Act. We find the A.O has made adhoc disallowance of bogus purchases on estimation of income@12.5% and has accepted the sales in the books of accounts. Whereas the CIT(A) has restricted the disallowance@6%. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to

- 5 -

delete the penalty and allow the grounds of appeal in favour of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.06.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 06.06.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai