

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.1139/मुं/ 2023 (नि.व.2011-12)
ITA NO. 1139/MUM/2023(A.Y. 2011-12)

M/s. Metal Traders,
B/307, E/3, Highway Park,
Thakur Complex, Kandivali East,
Mumbai 400 101
PAN: AAGFM-3851-K

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-WARD 33(2)(3),
C-12, 6th Floor, Pratyaksha Kar Bhavan,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Dinkle Haria, Advocate

प्रतिवादी द्वारा/Respondent by : Ms. Mahita Nair, Sr. AR

सुनवाई की तिथि/ Date of hearing : 28/06/2023

घोषणा की तिथि/ Date of pronouncement : 28/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 06/02/2023, for the Assessment Year 2011-12 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act'].

2. Ms. Dinkle Haria appearing on behalf of the assessee submitted that assessment for assessment year 2011-12 in the case of assessee was reopened on the ground that the assessee has indulged in obtaining bogus purchase bills. The Assessing Officer vide assessment order dated 24/11/2016 passed u/s. 143(3) r.w.s. 147 of the Act made addition by estimating suppressed undisclosed profit of 12.5% on alleged bogus purchases. The Assessing Officer also initiated penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income and concealment of income. Aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) restricted the addition to 6% of the total alleged bogus purchases. The order of CIT(A) restricting addition to 6% was again on mere estimations. The Assessing Officer vide order dated 05/03/2019 levied penalty of Rs.75,151/- i.e. to the extent of 100% of tax sought to be evaded. The assessee carried the issue in appeal before the CIT(A). The appeal of the assessee was dismissed by the CIT(A) for non-prosecution.

2.1 The Id. Counsel for the assessee submitted at the outset that no penalty u/s. 271(1)(c) of the Act is sustainable where the addition has been made merely on estimations. In support of her submissions, she placed reliance on the following decisions:

- (i) ACIT vs. M/s. Colo Color Pvt. Ltd., ITA No.5390/Mum/2018, A.Y. 2011-12 decided on 31/07/2020.
- (ii) ACIT vs. Golkunda Diamonds & Jewellery Ltd., ITA No.5507/Mum/2019 A.Y.2009-10 decided 27/07/2021.
- (iii) M/s. Ramnarain And Company vs. ACIT, ITA No.347/Mum/2023, A.Y. 2010-11 decided on 19/05/2023.

3. Per contra, Ms. Mahita Nair representing the Department submitted that the CIT(A) has upheld the findings of Assessing Officer that the assessee has indulged in obtaining bogus purchase bills from hawala dealers. Thus, it is a clear case of suppression of profits by way of furnishing inaccurate particulars of income and concealment.

4. We have heard the submissions made by both sides and have examined the orders of authorities below. We have considered the decisions on which Id. Counsel for the assessee has placed reliance. From perusal of the assessment order it is evident that addition on account of alleged bogus purchases has been made solely on estimations. The Assessing Officer has estimated suppression of profits on bogus purchases at 12.5%, in first appellate proceedings the CIT(A) restricted it to 6%. It is an accepted legal position that penalty u/s. 271(1)(c) of the Act can not be levied on estimated addition. This view has been upheld by different Hon'ble High Courts. Some of the decisions, wherein penalty u/s. 271(1)(c) of the Act levied on estimated additions has held to be unsustainable are as under:-

- (i) CIT vs. Krishi Tyre Retreading and Rubber Industries, 360 ITR 580(Raj);
- (ii) CIT vs. Sangrur Vanaspati Mills Ltd., 303 ITR 53 (P&H);
- (iii) CIT vs. Subhash Trading Co. Ltd., 221 ITR 110 (Guj);
- (iv) CIT vs. Aero Traders Pvt. Ltd., 322 ITR 316 (Delhi).

The Co-ordinate Bench of the Tribunal in the case of M/s. Ramnarain And Company vs. ACIT (supra), ACIT vs. Golkunda Diamonds & Jewellery Ltd.(supra) and ACIT vs. M/s. Colo Color Pvt. Ltd. by placing reliance on the aforesaid decisions by the Hon'ble High Courts have held that no penalty can be initiated where the addition is made on estimations.

5. Thus, in light of the fact of the case and the decision discussed above, we quash the impugned order and allow the appeal of assessee.

Order pronounced in the open court on Wednesday the 28th day of June, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/06/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai