

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, PRESIDENT, AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1542/Mum./2023**

(Assessment Year : 2010-11)

**ITA no.1567/Mum./2023**

(Assessment Year : 2011-12)

Rajesh Nobert Colaco  
C-102, Hrishikesh Apana Ghar CHS Ltd.  
Samarth Nagar, Andheri (West),  
Mumbai 400 053  
PAN – ADTPC 8906F

..... Appellant

v/s

Asst. Commissioner of Income Tax-24(3),  
Piramal Chambers, 601,  
Mumbai – 400 012

.....Respondent

Assessee by : None

Revenue by : Smt. Mahita Nair

Date of Hearing – 13/07/2023

Date of Order – 27/07/2023

**ORDER**

The present appeals have been filed by the assessee challenging the impugned order dated 01/03/2023, for the assessment year 2010-11, and the impugned order dated 28/02/2023, for the assessment year 2011-12, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the separate penalty orders passed under section 271(1)(c) of the Act.

2. When these appeals were called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed, despite service of the notice of hearing. Therefore, in view of the above, we proceed to dispose off the present appeals ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and based on the material available on record.

3. The only dispute raised by the assessee in both appeals is against the levy of penalty under section 271(1)(c) of the Act.

4. Since both appeals pertain to the same assessee involving a similar issue arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together.

**ITA No. 1542/Mum./2023**  
**Assessee's appeal-A.Y.2010-11**

5. The brief facts of the case as emanating from the record are: The assessee is an individual and for the year under consideration filed its return of income on 11/10/2010 declaring a total income of Rs. 22,81,740. Subsequently, on the basis of information received from the DGIT (Investigation), Mumbai regarding the receipt of information from the Sales Tax Department, Government of Maharashtra that certain parties are indulged in issuing bogus bills without delivering any goods or material and the assessee is one of the beneficiaries of bogus purchase bills amounting to Rs.54,14,625, proceedings under section 147 of the Act were initiated and notice dated 13/10/2014 under section 148 of the Act was issued to the

assessee. In response to the aforesaid notice, the assessee submitted that the return of income filed on 11/10/2010 be treated as a return filed in response to the aforesaid notice issued under section 148 of the Act. In order to verify the genuineness of the purchases, notices under section 133(6) of the Act were issued to those parties. However, these notices were returned unserved by the postal authorities. Thereafter, the assessee was asked to produce these parties, however, the assessee also failed to discharge the onus of producing the parties. Accordingly, the Assessing Officer ("AO") vide order dated 31/12/2015 passed under section 143(3) of the Act by referring to the material provided by the Sales Tax Department came to the conclusion that the assessee has been unable to give any convincing or cogent explanation as to how these goods come in his possession. Since the purchase rate as mentioned in the suppliers' sales invoices was not accepted, the AO rejected the books of accounts as provided in section 145(3) of the Act. Further, since there cannot be any sales without purchases and the sales were claimed as genuine, the AO came to the conclusion that the assessee was actually in possession of goods from some other suppliers. Accordingly, the AO treated the bogus purchase bills amounting to Rs.54,14,625 as unexplained expenditure and proceeded to make the addition by considering gross profit @ 14% of the above purchases, i.e. of Rs. 7,58,047 as the non-genuine purchases and added the same total income of the assessee.

6. Meanwhile, notice under section 274 read with section 271(1)(c) of the Act was issued to the assessee to show cause as to why the penalty under the aforesaid section be not imposed. In response thereto, the assessee submitted

that the Tribunal vide order dated 05/10/2017 passed in ITA No. 2893/Mum/2017 has restricted the disallowance to 8% as against 14% made by the AO. Therefore, the disallowance on non-genuine purchases has been worked out to Rs. 4,33,170. Accordingly, the AO vide penalty order dated 26/03/2018 passed under section 271(1)(c) of the Act, levied a penalty of Rs.1,29,151 for concealing the particulars of income. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act for concealment of income. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned DR explained the facts of the case and vehemently relied upon the order of the lower authorities.

8. Having heard the learned DR and perused the material available on record, we find that in the impugned order, the learned CIT(A) after considering the submissions filed by the assessee and findings of the AO has dismissed the appeal filed by the assessee. In the absence of any contradictory material being available on record, we are of the considered view that the impugned order passed by the learned CIT(A) requires no interference and, therefore, is upheld. Accordingly, the ground raised by the assessee is dismissed.

9. In the result, the appeal by the assessee is dismissed.

**ITA No. 1567/Mum/2023**  
**Assessee's appeal-A.Y.2011-12**

10. We find that in the assessment year 2011-12 also the AO on the basis of information received from the DGIT (Investigation), Mumbai regarding the information received from the Sales Tax Department, Government of Maharashtra that certain parties are indulged in issuing bogus bills without delivering any goods or material and the assessee is one of the beneficiaries of the bogus purchase bills, initiated proceedings under section 147 of the Act and notice under section 148 of the Act was issued to the assessee. We find that vide order dated 12/01/2016 passed under section 143(3) read with section 147 of the Act, treated the bogus purchase bills amounting to Rs. 10,68,300 as unexplained and made an addition of Rs. 1,49,562 by estimating the gross profit rate at the rate of 14% of the unexplained purchases.

11. We find that since the Tribunal restricted the disallowance to 8% as against 14% made by the AO and consequently the disallowance on account of non-genuine purchases was restricted to Rs. 85,464, the AO vide order dated 29/03/2018 passed under section 271(1)(c) of the Act levied a penalty of Rs. 25,640 for concealing the particulars of income. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act for concealment of income. Being aggrieved, the assessee is in appeal before us.

12. In the present appeal also, in the absence of any contradictory material being available on record, we are of the considered view that the impugned order passed by the learned CIT(A) requires no interference and, therefore, is upheld. Accordingly, the ground raised by the assessee is dismissed.

13. In the result, the appeal by the assessee is dismissed.

14. To sum up, both appeals by the assessee are dismissed.

Order pronounced in the open Court on 27/07/2023

**Sd/-**  
**G.S. PANNU**  
**PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27/07/2023**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai