

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

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

**ITA No.1063/Mum/2023
(Assessment Year :2007-08)**

M/s. Mun Gems 508, 5 th Floor Mago Param 100D, JSS Road Wadekar Building Opera House Mumbai-400004	Vs.	The Asst. Commissioner of Income Tax-19(2), Mumbai
PAN/GIR No.AAHFM4996J		
(Appellant)	..	(Respondent)

Assessee by	Shri Rahul Sarda
Revenue by	Smt. Mahita Nair
Date of Hearing	20/07/2023
Date of Pronouncement	31/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/03/2023 passed by NFAC, Delhi in relation to penalty proceedings u/s.271(1)(c) for the A.Y.2007-08.

2. Assessee is aggrieved by penalty of Rs.5,68,596/- on account of addition made by applying GP rate of alleged bogus purchases. Apart from that, assessee has also raised additional

ground that Assessing Officer has not specified the charge under which limb penalty is to be levied in the notice u/s.274 r.w.s. 271(1)(c) and therefore initiation and passing of the penalty order is bad in law.

3. The facts in brief are that on the basis of certain information from Investigation, assessee was found taking accommodation entry of bogus purchases from four parties:

Sr. No.	Name of the Hawala Party	Bill Amount
1	Avi Export	6162619
2	Moulimani	40732488
3	Sun	5070510
4	Vitrag	3795507
	Total	55761124

Based on such information assessee's case was reopened u/s.147. Before the AO, assessee submitted the details of the purchases alongwith stock register entry and cheque payments, custom appraisal report in respect to export sales, however, the ld. AO held that delivery challan etc. were not produced during the course of assessment proceedings. Based on such investigation report, ld. AO treated the entire purchases of Rs.5,57,61,124/- as unexplained. In the first appeal, ld. CIT (A) had reduced the addition by restricting it to 3% of GP rate in the entire purchases amount. Now, the ld. AO has levied penalty u/s. 271(1)(c) of Rs.5,68,596/- on the final addition sustained at

Rs.16,72,834/-. The ld. CIT(A) without discussing the issue on merits held that even in the case of an estimate, *Explanation to Section 271(1)(c)* will be attracted once there is difference between the assessed income and returned income is excess of 20%.

4. After hearing both the parties and perused the material on record, we find that before the ld. AO not only during the course of assessment proceedings but also during the penalty proceedings assessee had submitted the explanation that all the purchases were from the books and payments have been made through account payee cheques and ultimately addition has been sustained on purely adhoc estimate of gross profit rate. From the perusal of the records, it is seen that the assessee has submitted the quantitative details of purchases alongwith stock register entry and corresponding export sales which was also verified from the customer appraisal report. Once, the source of payment of purchases have been made through books of accounts and through account payee cheques and there is corresponding sales, then merely because some adhoc GP rate has been applied on such alleged bogus purchases to factor in suppression of alleged gross profit, no penalty can be levied for furnishing of inaccurate particulars of income or concealing particulars of income, which ld. AO has held in his penalty order that penalty is being levied under both the limbs, which itself shows his satisfaction is vague. Accordingly, penalty levied on such adhoc estimate cannot be sustained in the present case and hence

same is deleted. Since, we have already deleted the penalty, the legal issue raised in the additional ground become purely academic.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 31st July, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai; Dated 31/07/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai