

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2524/Mum/2023
(Assessment Year :2009-10)**

ACIT, Circle-4(1)(1) Room No.640, 6 th Floor Aayakar Bhavan M.K.Road Mumbai- 400 020	Vs.	Avenue Real Estate Private Limited 6 th Floor, A-Wing Universal Business Park, Chandivali Farm Road, Andheri East Mumbai- 400 072
PAN/GIR No.AAFCA0786R		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Manoj Sinha
Date of Hearing	18/03/2024
Date of Pronouncement	18/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 18/05/2023 passed by NFAC, Delhi in relation to the penalty proceedings u/s 271(1)(c) for the A.Y.2009-10.

2. The Revenue has challenged the deletion of penalty of Rs.4,83,280/- u/s.271(1)(c) for disallowance of GP rate on alleged bogus purchases.

3. The brief facts are that assessee company is engaged in construction and development of properties and has filed return of income declaring total income of Rs.19,74,84,513/- on 29/09/2009. Assessment u/s.143(3) r.w.s.147 was completed on total income of Rs.24,92,50,817/- after making addition of Rs.4,75,20,254/- on account of information related to bogus accommodation entries made by the assessee. In the quantum of appeal, ld. CIT (A) has confirmed the disallowance of bogus purchases to the tune of Rs. 14,25,608/- by applying the GP rate of 3%. The penalty h u/s 271(1)(c) as been levied on disallowance of Rs.14,25,608/- which was worked out to Rs. 4,83,280/-. The ld. CIT (A) has deleted the penalty.

4. After hearing the ld. DR and on perusal of the relevant finding given in the impugned order, we find that there was an information received from the Investigation Wing that assessee company had made purchases from eight parties for sums aggregating to Rs.4,75,20,254/- which were made on account of alleged purchase bills which were found to provide bogus bills. To prove the genuineness of the case, assessee had to filed invoices giving the details and nature of goods, quantity of goods, rate, value, VAT charges, TIN Numbers and stated that all the purchases were through bank account duly recorded in the books and the details of the cheques issued were also furnished. In the quantum of proceedings, the ld. CIT (A) has restricted addition to 3% of the alleged bogus purchases which worked out to Rs.14,25,608/- and the same

was also confirmed by the Tribunal vide order dated 06/09/2017. Now, the penalty has been levied by the Id. AO on such disallowance. Here, in this case the addition has been sustained in the quantum proceedings based on some estimate of purchases debited in the books of accounts holding that 3% of gross profit is reasonable for making addition on account of alleged bogus purchases which otherwise have been recorded in the books of accounts and the source of purchases are also from the books. Once purchases have been debited in the books alongwith quantity details and corresponding sales have been accepted alongwith overall trading result and gross profit, then merely by estimating of some GP rate on purchases, it does not amount to concealment of income. Thus, no penalty can be levied for just an estimate of gross profit on purchases. Accordingly, the order of the Id. CIT (A) in deleting the penalty is confirmed and the departmental appeal is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced on 18th March, 2024.

Sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Mumbai; Dated 18/03/2024
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