

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4367/Mum/2023  
(Assessment Year :2009-10)**

**ITA No.4366/Mum/2023  
(Assessment Year :2010-11)**

**&  
ITA No.4365/Mum/2023  
(Assessment Year :2011-12)**

Dy. Commissioner of Income Tax-5(2)(1) Mumbai Room No.571, 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road, Mumbai- 400 020	Vs.	IMI Alloys Private Limited 80/82, Industrial House Khetwadi, 1 <sup>st</sup> Lane Khetwadi, Mumbai- 400004
<b>PAN/GIR No.AABCI5571L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajkumar Singh
Revenue by	Shri Lieder Panicker
<b>Date of Hearing</b>	<b>06/05/2024</b>
<b>Date of Pronouncement</b>	<b>09/05/2024</b>

**आदेश / O R D E R**

**PER BENCH:**

The aforesaid appeals have been filed by the Revenue against separate impugned order passed by NFAC, Delhi in relation to the penalty proceedings u/s.271(1)(c) for the A.Yrs. 2009-10, 2010-11 & 2011-12.

2. In all the years the Revenue is aggrieved by deletion of penalty by CIT(A) on estimation of gross profit of alleged bogus purchases. Here, in this case the assessments were completed u/s.147 on the basis of information received from the Investigation Wing of the department in respect of purchases made from suspected hawala dealers as declared by the Sales Tax department. The Id. AO has completed the assessment by applying GP rate of 12.5% on adhoc basis on the alleged bogus purchases. In the appeal filed by the assessee, the application of GP rate of 12.5% on the purchases were upheld. However, the Tribunal in the quantum proceedings held that GP rate declared by the assessee should be reduced and accordingly GP rate was reduced to almost 5-6%. In A.Y.2011-12 the Tribunal has restricted the addition on account of GP @5%. Now, the penalty has been levied of Rs.1,52,000/- in A.Y.2009-10, and Rs.2,24,108 in A.Y.2010-11 and Rs.3,64,601/- in A.Y.2011-12 on such adhoc estimate of GP applied on purchases. The Id. CIT(A) has deleted the addition after observing and holding as under:-

*“4.1. I have considered the findings of the AO, submissions of the appellant and the facts of the case as placed before me, A very similar case came up before the honorable jurisdictional Mumbai tribunal in the case of Fancy Diamonds India Pvt Ltd Vs DCIT (ITAT Mumbai) In that case the addition has been made by the Assessing Officer in all the three years on estimated basis on alleged bogus purchases The honorable ITAT coordinate bench for Assessment Year 2013-14 in ITA No. 5384/Mum/2019, vide its order dated 17.06 2022 held as follows "We have heard the submissions made by rival sides*

*and have examined the orders of the authorities below Undisputedly, the additions made on account of bogus purchases were partially confirmed by the Tribunal The assessee failed to discharge its onus in proving genuineness of the purchases and dealers. During assessment proceedings, the addition was made on estimation @ 12.5% In first appeal, the addition was restricted to 3% and on further appeal to the Tribunal by the Revenue, the addition was enhanced to 6%. The entire addition right from assessment stage to the Tribunal was merely on estimations. There is no definite finding on the quantum of concealment of income. It is an accepted legal position that penalty under section 271(1)(c) of the Act levied on additions made merely on estimations is unsustainable*

*4.2. The Hon'ble Rajasthan High Court in the case of CIT vs Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580 has held that where addition is made purely on estimate basis, no penalty u/s 271(1)(c) of the Act is leviable Similar view has been expressed by Hon'ble Punjab & Haryana High Court in the case of CIT vs Sangrur Vanaspati Mills Ltd reported as 303 ITR 53. The Hon'ble High Court approving the order of Tribunal held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty u/s 271(1)(c) of the Act is not leviable The Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd reported as 221 ITR 110 has taken a similar view in respect of penalty levied u/s 271(1)(c) of the Act on estimated additions There are catena of decisions by different High Courts and various Benches of the Tribunal wherein penalty levied u/s 271(1)(c) of the Act on estimated addition has been held to be unsustainable.”*

3. Here in this case, the ld. AO had applied GP rate of 12.5% while making the addition on account of alleged bogus purchases which has been reduced further by the Tribunal in the quantum proceedings. It is not in dispute that the source of its purchases are from the books that there is no discrepancy with regard to quantity of purchases and corresponding quantity of sales. Once no such discrepancy in

the trading account has been found, then merely because addition has been sustained, the application of adhoc GP it cannot be said that it is a case of furnishing inaccurate particulars of income or concealment of income and accordingly, the order of the ld. CIT(A) deleting the penalty is upheld and consequently the grounds raised by the Revenue are dismissed.

**4. In the result, appeals of the Revenue are dismissed.**

Order pronounced on 9<sup>th</sup> May, 2024.

**Sd/-**

**(RENU JAUHRI)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 09/05/2024

KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

**Sd/-**

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**