

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH  
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I T A. Nos 4473, 4472 & 4470/MUM/2023  
(A.Y.2009-10, 2010-11 & 2011-12)

Vinod Hirachand Sanghvi, 3 15 GR Floor, Gogari Mansion, 1 Carpenter Street, Charni Road, Mumbai-400004.	Vs .	ACIT-15(2), Piramal Chambers, Lalbaug, Mumbai-400012.
PAN/GIR No. AFMPS3101F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

ITA. No. 4870/MUM/2023  
(A.Y. 2010-11)

ACIT-15(2), Piramal Chambers, Lalbaug, Mumbai-400012	Vs .	VinodHirachand Sangvi, 3 15 GR Floor, Gogari Mansion, 1 Carpenter Street, Charni Road, Mumbai-400004.
PAN/GIR No. AFMPS3101F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Raj Kumar Singh.AR
Revenue by	Ms.Rajeshwari Menon.Sr. DR

सुनवाई की तारीख/Date of Hearing	22.05.2024
घोषणा की तारीख/Date of Pronouncement	29.05.2024

**ORDER****PER PAVAN KUMAR GADALE, JM:**

These are the appeals filed by the assessee against the separate orders of the National Faceless Appeal Centre, Delhi / (CIT(A) passed u/sec 271(1)(c) and U/sec250 of the Act for the A.Y 2009-10, A.Y.2010-11 & A.Y. 2011-12 and the revenue has filed the cross appeal for the A.Y 2010-11.

2. Since issues involved in these appeals are common and identical, hence they are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up ITA No.4473/Mum/2023, A.Y 2009-10 as lead case and facts narrated. The assessee has raised the following grounds of appeal:

*1. That on facts and circumstances of the case penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 by ld. A.O. on the basis of defective penalty show cause notice issued and alleging the both different limbs of default prescribed in the said section and partly confirmed by ld. CIT (Appeals) to the extent of Rs.5,87,413/- in respect of estimated disallowance of purchases being legally untenable thus appellant prays that impugned penalty order passed and confirmed partly by ld. Appellate Commissioner being against the settled judicial precedent therefore same may kindly be quashed and part penalty levy confirmed be deleted.*

*2. That without prejudice to appeal ground no.1, even on merit of the case impugned penalty imposed and partly confirmed to the extent of Rs.5,87,413/- in respect of estimated disallowance of purchases that disallowance has been varied differently by different Appellate Authorities being wrong on facts and bad in law therefore may kindly be deleted.*

*3. That the appellant craves the leave to amend, alter, substitute any of the above appeal grounds and or to raise new or additional grounds of appeal at the time of hearing.*

3. The brief facts of the case are that, the assessee is engaged in the business of ferrous and non ferrous metals. The assessee has filed the return of income for the A.Y 2009-10 on 25.10.2009 disclosing a total income of Rs.11,06,826/- and the assessment was completed u/sec 143(3) of the Act determining total income of Rs.11,80,720/- vide order dated 12.12.2011. The Assessing Officer(AO) has received the information from DGIT(Inv) Mumbai that the assessee has obtained accommodation bills/bogus purchase bills from various parties as per website of sales tax department Maharashtra and the assessee is a beneficiary. The AO has reason to believe that the income has escaped the assessment and has issued notice u/sec 148 of the Act. Subsequently notice u/sec 143(2) and U/sec 142(1) of the Act along with questionnaire was issued. In compliance to the notices, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. Whereas the AO has dealt on the details and has issued notice u/sec 142(1) of the Act to produce the parties along with the purchases bills, ledger accounts, quantitative details and proof of delivery of goods to examine the genuineness of the transactions. In compliance the assessee has submitted the partial details in support of claim of purchases but the AO was not satisfied with the

explanations and information and to test check the genuineness of the purchases has issued notice u/sec 133(6) of the Act on the parties and the said notices were returned un-served by the postal authorities. Finally the A.O. has issued show cause notice and in reply, the assessee has submitted the details and information referred at Para 5.4 of the assessment order. Whereas the A.O was not satisfied with the explanations and has made addition of alleged bogus purchases u/sec 69C of the Act of Rs.1,86,43,641/- and assessed the total income of Rs. 1,98,24,360/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 01.03.2014.

4. Subsequently, the A.O. has initiated penalty proceedings u/sec 271(1)(c) of the Act, Since assessee has entered into bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and the assessee has not filed the reply/explanations in the penalty proceedings. Finally, the A.O has levied penalty based on the addition made in the scrutiny assessment, which worked out to Rs. 55,93,092/- and passed the order u/s 271(1)(c) r.w.s 274 of the Act dated 31.03.2017.

5. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal, statement of facts, findings of scrutiny assessment and the submissions of the assessee. In the course of appellate proceedings it was brought to the

knowledge of the CIT(A) that the assessee has filed an appeal against the order of the A.O with the CIT(A) on quantum addition of bogus purchases and the appellate authority has directed the A.O to restrict the disallowance @17.5% and on further appeal by the assessee against the CIT(A) order, the Honble Tribunal has restricted the disallowance @8% of alleged bogus purchases. The CIT(A) considering these facts and submissions has restricted the penalty levied and partly allowed the assessee appeal.. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

6. At the time of hearing the Ld. AR submitted that the CIT(A) erred in partly sustaining the penalty u/s 271(1)(c) of the Act. The Hon'ble tribunal has directed the Assessing officer to restrict the addition on account of bogus purchases estimating @8% of bogus purchases as income and was accepted by the assessee and therefore, the levy of penalty on estimated income cannot be sustained. Further the Ld. AR also made submissions on validity of issue of penalty notice and relied on the judicial decisions and prayed for allowing the assessee appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that levy of penalty u/s 271(1)(c)

of the Act by the A.O based on the assessment order under section 143 r.w.s 147 of the Act. We find the A.O has made adhoc disallowance of bogus purchases and the CIT(A) on quantum addition of bogus purchases has directed the A.O to restrict the disallowance @17.5% and on further appeal by the assessee against the CIT(A) order, the Honble Tribunal has restricted the disallowance @8% of alleged bogus purchases. We are of the opinion, that where the addition is sustained on the estimated basis, no penalty u/s 271(1)(c) of the Act can be levied. We find that the disallowance of purchases on adhoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act. The Assessing officer has not doubted the sales and made disallowance of bogus purchases. We also rely on the ratio of the Honorable Jurisdictional High Court in the case of M/s Nikunj Eximp Enterprises Vs Cit (W.P.No 2860 dated 18-06-2014). Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal in favour of the assessee.

8. Since, the grounds of appeal on merits are decided in favour of the assessee, hence the grounds of appeal with respect to validity of penalty notice raised by the assessee becomes academic and are left open.

9. In the result, the appeal filed by the assessee is allowed.

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10. As the facts and circumstances in these appeals are identical to ITA No 4473/Mum/2023, for the A.Y 2009-10 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for these appeals also. Accordingly, We allow the grounds of appeal in favour of the assessee.

**ITA No. 4870/Mum/2023, A.Y 2010-11(Revenue Appeal)**

11. The revenue has raised grounds of appeal challenging the order of the CIT(A) on reducing the penalty levied under 271(1)(c) of the Act.

12. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in partly deleting the penalty, whereas the A.O has received the information that, the assessee has obtained bogus purchase bills and the same could not be overlooked and prayed for allowing the revenue appeal. Contra, the Ld. AR supported the order of the CIT(A) to some extent and mentioned that cross appeal is filed by the assessee.

13. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in partly deleting the penalty overlooking the transactions of bogus purchases. We are of the opinion that when the

addition is on estimated basis, penalty u/s 271(1)(c) of the Act cannot be levied on such adhoc estimated income. The disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act. Since we have dealt and decided this disputed issue in the assessee appeal and relied on judicial decisions and find that penalty cannot be levied on the estimated income as discussed in the above Paragraph 6,7,8 & 9 and allowed the assessee appeal. Further the Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidences or information to take different view. Accordingly, we dismiss the grounds of appeal of the revenue.

14. In the result, the appeals filed by the assessee for the A.Y 2009-10, 2010-11 and 2011-12 are allowed and the appeal filed by the revenue for the A.Y 2010-11 is dismissed.

Order pronounced in the open court on 29.05.2024.

Sd/-  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 29/05/2024

KRK.PS

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent

3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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