

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

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.1019/MUM/2024
Assessment Year 2009-10**

Vijay Pandharinath Avhad,
A-504, Swastik Park,
Reti Bunder Road Near,
Umeshnagar,
Dombivli West – 421 201
PAN: AFTPA-8153-J

- Appellant

Vs.

Income Tax Officer,
Ward – 3(4), Kalyan,
2nd Floor, Rani Mansion,
Murbad Road,
Kalyan West – 421 201.

– Respondent

Appellant by : Shri N.A.Kulkarni
Respondent by : Ms. Rajeshwari Menon SR DR

Date of Hearing : 04/06/2024
Date of Pronouncement : 10/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 14/02/2024 passed by Commissioner of Income Tax (Appeals) [in short the ld. CIT(A)], NFAC, Delhi, wherein he has confirmed the penalty of Rs.7,34,063/- made by the Assessing Officer u/s. 271(1)(c) of the Income Tax Act, 1961[in short 'the Act'] for Assessment Year 2009-10.

2. We have heard the parties and perused the record. The Assessing Officer reopened the assessment of the assessee u/s. 147 of

the Act upon receiving information that the assessee has availed accommodation entries in the form of bogus purchases to the tune of Rs.21,59,637/- from hawala operators. Since, the assessee did not respond to the notices issued by the Assessing Officer, the Assessing Officer completed the assessment to the best of his judgment making addition of aforesaid purchases amount of Rs.21,59,637/-. When the matter reached before the Tribunal, the Tribunal, vide its order dated 02-06-2017 dismissed the appeal of assessee on account of non-appearance of the assessee. Upon receipt of above said appellate order of Tribunal, the Assessing Officer imposed a penalty of Rs.7,34,063/- u/s. 271(1)(c) of the Act on the addition of alleged bogus purchases. The same was confirmed by the Id.CIT(A) and hence the assessee has filed this appeal challenging the confirmation of penalty.

3. The Id.A.R submitted that the ex-parte order dated 02/06/2017 passed by the Tribunal has been recalled by the Tribunal by its order passed in the Miscellaneous Application filed by the assessee. Subsequently, the appeal of the assessee was again disposed of by the Tribunal, vide its order dated 26/12/2018 passed in ITA No.7293/Mum/2016, wherein it was partly allowed by restricting the addition to 25% of the alleged non-genuine purchases. The Id. A.R submitted that addition made by the Assessing Officer has thus been sustained partially on estimated basis.

4. The Id A.R further submitted that it is settled proposition of law that the penalty u/s. 271(1)(c) of the Act cannot be imposed on the additions made on estimate basis. In support of the above said legal proposition, the Ld A.R placed his reliance on the following case laws:-

- (a) Mr. Mohammed Sharif vs. ITO, 2019 ITL 3052

(b) M/s. Sushma Nitin Patil vs. ITO (ITA No.6110/Mum/2018dated 22/02/2023.

(c)Mukesh Shaligram Sharda vs. ITO, (ITA No.1907 & 1908/ Mum/2021, dated 22/02/2023.

In all the above said cases, it has been held that the penalty u/s 271(1)(c) of the Act cannot be levied on the estimated additions. We notice that the Co-ordinate Bench, in the case of Mukesh Shaligram Sharda (supra) has followed the decision rendered by Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading & Rubber Industries, 360 ITR 580 and Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd., 221 ITR 110 in this regard.

5. In the instant case, the Tribunal has sustained addition relating to alleged bogus purchases on estimate basis. Accordingly, following the above said decisions of Hon'ble High Courts and co-ordinate benches, we hold that the penalty cannot be levied u/s. 271(1)(c) of the Act on such kind of estimated additions, Accordingly, we set aside the order passed by Ld CIT(A) and direct the Assessing Officer to delete the impugned penalty.

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

Order pronounced in the open court on 10 June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Sd/-

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 10 June, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai