

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA NO.1431/MUM/2024(A.Y. :2009-10)

ITA NO.1494/MUM/2024(A.Y. : 2010-11)

ITA NO.1492/MUM/2024(A.Y. : 2011-12)

ACIT-32(1),Mumbai

2nd Floor, 241, Kautilya Bhavan,

BKC, Mumbai.

---- Appellant

Vs.

United Insulation,

Gala No.2G Laxmi Industrial Estate,

New Link Road,

Andheri West, Mumbai – 400 053

PAN: AAAFU-0291-K--- Respondent

Appellant by : Ms. Rajeshwari Menon, SR.DR

Respondent by : S/Shri Sanjay Shah, Hardik Shah,
Chintan Shah & Dhiraj Shah

Date of Hearing : 06/06/2024

Date of Pronouncement : 11/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

All the three appeals filed by the Revenue are directed against the orders passed by Commissioner of Income Tax (Appeals), NFAC, Delhi [in short the ld. CIT(A)] for Assessment years 2009-10 to 2011-12. The revenue is aggrieved by the decision of Ld.CIT(A) in deleting the penalty levied by the Assessing Officer u/s. 271(1)(c) of the Act in all the three years under consideration.

2. We heard the parties and perused the record. The assessee is an interior decorator. On the basis of information received from Maharashtra State Sales Tax Department that the assessee has

purchased goods from certain dealers, which were indulging in providing accommodation bills without actually supplying the materials and upon noticing that the assessee has purchased goods from some of such kind of dealers, the AO reopened the assessment of three years under consideration u/s 147 of the Act. The Assessing Officer completed the reassessments of all the three years by disallowing 25% of those alleged bogus purchases. He also levied penalty u/s. 271(1)(c) of the Act in all the three years. The details of addition made and penalty levied by the Assessing Officer in all the three years are tabulated below:

Assessment Year	Addition made by A.O	Penalty Levied
2009-10	Rs.29,90,150/-	Rs.4,61,977/-
2010-11	Rs.14,54,596/-	Rs.2,24,374/-
2011-12	Rs.1,64,338/-	Rs.25,390/-

3. In the appeals filed by the assessee against quantum proceedings, the Ld.CIT(A) restricted the disallowance to 12.5% of the value of the alleged bogus purchases.

4. The assessee also filed appeals before ld CIT(A) challenging the penalty levied in all the three years. The Ld.CIT(A) deleted the penalty in all the three years holding that the penalty u/s. 271(1)(c) of the Act cannot be levied on estimated additions. In this regard the Ld.CIT(A) 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 also the decision rendered by the Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Company Ltd., (221 ITR 110). The Ld.CIT(A) has also noticed that the above said decisions rendered by Hon'ble High Courts have been followed by Mumbai Bench of ITAT in the case of Jaisingh H. Solanki vs. ITO (ITA

No.2211/Mum/2023 dated 17/10/2023). Accordingly, Ld.CIT(A) deleted the penalty levied for all the three assessment years, hence, the Revenue is aggrieved.

5. We heard the parties and perused the record. We notice that the Assessing Officer himself has disallowed only 25% of the amount of alleged bogus purchases, which has been reduced to 12.5% by the Ld.CIT(A). This fact shows that the additions in all the three years have been made by the Assessing Officer on estimated basis, which was also partly sustained by Ld.CIT(A) on estimated basis. In the case laws relied on by Ld.CIT(A), it has been held that penalty u/s. 271(1)(c) of the Act cannot be levied on the additions made on estimate basis. Accordingly, we do not find any reason to interfere with the order passed by Ld.CIT(A).

6. In the result, all the three appeals field by the Revenue are dismissed.

Order pronounced in the open court on 11th June, 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai, Date : 11th June, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 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