IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1330/Mum./2024
(Assessment Year : 2009-10)

Jivanlal Corporation
409, Western Edge II, Western
Express Highway, Borivali (East), ……. Appellant
Mumbai-400066
PAN No. : AACFJ3353K

v/s

ITO-Ward-25(1)(1)
Kautilya Bhavan, 1st Floor ……. Respondent
Mumbai-400051.

Assessee by : Shri Bhupendra Shah
Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 11/06/2024	Date of Order – 25/07/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 27/01/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)*"], for the assessment year 2009-10, which in turn arose from the penalty order passed under section 271(1)(c) of the Act.

2. The only grievance of the assessee, in the present appeal, is against the levy of penalty under section 271(1)(c) of the Act.

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is engaged in the business of trading in chemicals and solvents. For the year under consideration, the assessee filed its return of income on 30/09/2009 declaring a total income of INR 9,29,545. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from DGIT (Investigation), Mumbai, regarding the enquiries conducted by the Sales Tax Department, Mumbai, on suspicious parties, who were only providing accommodation entries without doing any actual business, it was found that the assessee has shown purchases amounting to INR 93,61,934 from such parties. Accordingly, on the basis of the aforesaid information, proceedings under section 147 of the Act were initiated, and notice under section 148 of the Act was issued on 13/01/2014. During the assessment proceedings, the assessee was asked to furnish all relevant evidence to establish that the goods have actually been delivered/supplied. The assessee was also asked to furnish its explanation of the purchases purported to have been made from the aforesaid parties, and the details of brokers/agents through whom purchases were claimed to have been made by the assessee, in order to prove the genuineness of the transaction. The assessee was also asked to show cause as to why the expenditure claimed, in respect of the purchases shown to have been made from the aforesaid dealer

should not be disallowed. Since the assessee failed to establish the genuineness of the purchases shown to have been made from the aforementioned parties, the Assessing Officer ("*AO*") vide order dated 13/03/2015 passed under section 143(3) read with section 147 of the Act came to the conclusion that purchases made by the assessee from these parties are bogus and non-genuine. By applying the three year average gross profit rate of 6.58%, the AO made an addition of INR 6,16,015 being the total suppression of profits.

4. Meanwhile, penalty proceedings under section 271(1)(c) of the Act were initiated separately. After considering the submissions of the assessee, the AO vide order dated 28/01/2022 passed under section 271(1)(c) of the Act levied a penalty of INR 1,92,450. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act.

5. Thus, it is evident from the record that the AO treated the entire purchase of INR 93,61,934 as bogus and non-genuine, however, giving benefit of doubt to the assessee made an addition by applying three year average gross profit rate of 6.58%. Therefore, the entire addition has been made merely on the basis of estimation as to the average gross profit rate. It is an admitted position that the assessee did not challenge the aforesaid addition so made by the AO.

6. We find that the Hon'ble Rajasthan High Court in CIT v/s Krishi Tyre Retreading and Rubber Industries, [2014] 360 ITR 580 (Raj.) held that where

addition is made purely on estimate basis, no penalty under section 271(l)(c) of the Act is leviable. Similar view has been expressed by the Hon'ble Punjab & Haryana High Court in CIT v/s Sangrur Vanaspati Mills Ltd., [2008] 303 ITR 53 (P&H), wherein the Hon'ble High Court held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty under section 271(l)(c) of the Act is not leviable. Further, the Hon'ble Gujarat High Court in CIT v/s Subhash Trading Co. Ltd., [1996] 221 ITR 110 (Guj.) has taken a similar view in respect of levy of penalty under section 271(l)(c) of the Act on estimated additions. Therefore, it is evident that the issue about, justification of imposition of penalty, where the addition is made on the basis of an estimate is no longer *res integra*.

7. Thus, respectfully following the aforesaid decisions, we are of the considered view that the penalty under section 271(1)(c) of the Act cannot be levied merely on the basis of an estimated addition. Accordingly, we direct the AO to delete the same.

8. In the result, the appeal by the assessee is allowed.

Order pronounced in the open court on 25/07/2024

SD/-	**SD/-**
B R BASKARAN	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 25/07/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT, Mumbai City concerned;
(4) The DR, ITAT, Mumbai;
(5) Guard file.

True Copy

By Order

Vijay Pal Singh
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai