

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 267/Ahd/2020  
Assessment Year 2010-11**

The JT. CIT, Circle-6(1), Ahmedabad  <b>(Appellant)</b>	Vs	Shri Nilesh Rameshchandra Shah, Prop. Shagun Art, 8, Ram Shyam Apartment, Nr. L.G. Hospital, Maninagar, Ahmedabad-380008  <b>PAN: AFQPS3070R (Respondent)</b>
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**Revenue Represented: Smt. Malarkodi. R, Sr.D.R.  
Assessee Represented: Shri Karan Shah, A.R**

Date of hearing : 14-05-2024  
Date of pronouncement : 29-07-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 13.02.2020 passed by the Commissioner of Income Tax (Appeals)-6, Ahmedabad restricting the Penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2010-11.

2. The Registry has noted that there is a delay of 8 days in filing the above appeal by the Revenue. This appeal was filed by the Revenue on 25.09.2020. This period falls under COVID-19 Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.9.2021 in M. A. No. 665 of 2021 in suo-moto Writ Petition (Civil) No.3 of 2020, the Hon'ble Supreme Court has excluded time limit for filing appeal from 15.3.2020 till 02.10.2021. Thus, there is no delay in filing the above appeal and we take up the Revenue appeal for adjudication.

3. The solitary ground raised by the Revenue reads as follows:

*1. Whether on the facts and in the circumstances of the case, the decision of Ld. CIT(A) is justified in deleting the penalty of Rs.18,62,373/- levied by the AO, overlooking the facts of the case that the AO has made addition for bogus purchases which was restricted by the Hon'ble High Court to 5% only thereby not considering the Supreme Court decision in the case of NK Proteins Ltd V/s DCIT in SLP 769 of 2017 wherein it was held that " once it is observed that the purchases are bogus, then addition should be made for entire purchases and not for profit element embedded in such purchases"?*

*2. It is therefore, prayed that the order of the Ld.CIT(A) be set aside and that of the assessing officer be restored to the above extent.*

*3. The appellant craves leave to add, alter and /or to amend all or any of the ground before the final hearing of the appeal.*

4. The brief facts of the case are that the assessee is an individual, filed his Return of Income for the Asst. Year 2010-11 declaring total income of Rs.18,50,640/-. The return was processed u/s. 143(1) and then reopened by issuing notice u/s. 148 of the Act on 06/05/2014. The assessee requested to treat the original return in compliance u/s. 148 notice and the reassessment was made determining the total income at Rs. 81,94,970/- after making

addition on account of rejection of books of accounts and addition on account of disallowance of bogus purchase amounting to Rs.63,44,326/-.

4.1. The assessment order was travelled before this Tribunal wherein the Co-ordinate Bench in ITA No. 2248/Ahd/2017 vide order dated 15/07/2019 directed to estimate the disallowance at 5% of the alleged bogus purchase over and above the profits already declared by the assessee. In the meanwhile, the Assessing Officer initiated penalty proceedings and levied penalty for concealment of income of Rs.19,34,130/-.

5. Aggrieved against the Penalty order, assessee filed an appeal before Ld. CIT(A) who has considered the quantum appeal of the assessee, wherein the quantum disallowance of alleged bogus purchases was restricted to 5% thereby confirmed the levy of penalty u/s. 271(1)(c) to 5% of the bogus purchase namely Rs.3,17,216/- by observing as follows:

*5.3 After considering all facts and circumstances of the case and submissions of the appellant, I am not inclined to agree with the contention of the appellant. As detailed above, the AO had made addition of Rs. 63,44,326/- on account of treating purchases as bogus. Further, as mentioned above, hon'ble ITAT has restricted the above addition to 5% of total bogus purchases. It is seen that hon'ble ITAT has nowhere mentioned that while confirming disallowance that they are making the disallowance on account of estimation of GP. Thus, it is clear that there is no substance in the contention of the appellant. Case laws relied on by the appellant are not applicable as the facts are different.*

*5.4 In view of above discussion and relying on judgment of hon'ble ITAT vide order dated 15.07.2019 and 31.10.2018 in assessee's own case referred to above, it is noted that the appellant has shown bogus purchase of Rs. 63,44,326/- in books of accounts. The Hon'ble ITAT has also in*

*principle has held that the purchases was bogus but restricted the addition 5% of the bogus purchase. In view of the above discussion it is observed that the appellant has furnished the inaccurate particular thus concealed the income therefore in principle, the penalty levied by the AO is confirmed accordingly the penalty is also restricted to 5% of the total bogus purchase i.e. Rs.3,17,216/- only. Therefore, these grounds of appeals are partly allowed.*

6. Aggrieved against the same, the Revenue is in appeal before us. The A.O. levied the penalty, since the Ld. CIT(A) confirmed the entire bogus purchase, which is later restricted to 5% by the Co-ordinate Bench of this Tribunal in assessee's own case. Ld. Sr. D.R. could not place on record whether the quantum appeal was been challenged before Higher Forum and the same was being allowed or reversed in faovur of the Revenue. In the absence of the same, we do not find any infirmity in the order passed by Ld. CIT(A) who has restricted the penalty u/s. 271(1)(c) to 5% of bogus purchase made by the assessee. Thus the ground raised by the Revenue is devoid of merits and the same is liable to be rejected.

7. In the result, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 29-07-2024
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER** *True Copy*  
**Ahmedabad : Dated 29/07/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue

3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद