

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.3916/Mum/2023
Assessment Year: 2010-11**

ITO-27(3)(1), Mumbai	Vs.	Sudarshan Vithal Kote 1/7-8, Nityanand Colony, Dev Shetty Compound, Ghatkopar (West), Mumbai- 400086. PAN: AOJPK 1524 L
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri B. Laxmi Kanth, Sr. DR

Date of Hearing : 09.07.2024
Date of Pronouncement : 31.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the revenue for the assessment year 2010-11 is directed against the order dated 05.09.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The revenue has raised the following grounds of appeal:

"1) Whether on the facts and circumstances of the case, the Id. CIT(A) erred in deleting the penalty of Rs. 13,50,147/- stating that addition made by the AO is on the basis of estimation without considering the fact that the AO established that the purchase is non genuine and then case to estimation of profit by rejecting the books of assessee.

2) Whether on the facts and circumstances of the case, the Id. CIT(A) erred in deleting the penalty of Rs. 13,50,147/- without appreciating the fact that the purchase was not genuine and purchase parties has accepted these facts in their statement before sale tax authorities and notices issued by the AO u/s 133(6) to all the six purchase parties

returned unserved and assessee could not produce those parties during the assessment proceedings.

3) The appellant prays that the order of the CIT(A) on the above ground(s) be set aside and that of the assessing officer restored.

3) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

2. Fact in brief is that return of income declaring total income of Rs. 1,81,900/- was filed on 15.10.2010. Subsequently, the case was reopened on the basis of the information received from the DGIT (Inv.), Mumbai that assessee has obtained accommodation entries from various parties in the form of purchase bills amounting to Rs. 1,80,59,239/-.

3. During the course of assessment proceedings, notices u/s 133(6) of the Act were issued to the parties for calling information but same were returned back by the postal authority on the ground that the parties were not available at the given address. In view of this, assessee was asked to produce the parties and explain by the aforesaid purchases should not be disallowed. The assessee could not produce the purchase parties. Therefore, the assessing officer held that assessee has suppressed profits and disallowed 25% of the total purchases of Rs. 1,80,59,239/- which worked out to Rs. 45,14,810/- and added the same to the total income of the assessee. The assessing officer passed penalty order u/s 271(1)(c) of the Act on 27.09.2016 stating that it was proved that parties from whom purchases made were not existed and assessee has not submitted any plausible explanation. Therefore, the AO observed that it was a fit case to levy penalty u/s 271(1)(c) read with Explanation 1 of the Act. The assessing officer has levied penalty of Rs. 13,50,147/- for furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Act.

4. The assessee filed appeal before the CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following decision of ITAT, Mumbai holding that penalty is not leviable in respect of addition made by the assessing officer on estimation basis.

5. Before us, the assessee has filed written submission and submitted copy of order of the ITAT in respect of quantum addition wherein the ITAT has dismissed the appeal of the revenue against the order of ld. CIT(A) in restricting the estimated addition to the extent of 10% as against 25% of addition made by the assessing officer.

6. On the other hand, ld. DR supported the order of lower authority.

7. Heard both the sides and perused the material on record. The assessing officer has estimated the profit of alleged bogus purchases of Rs. 1,80,59,239/- @ 25% which comes to Rs. 45,14,810/- and added to the total income of the assessee. The assessing officer has levied penalty on the aforesaid amount of Rs. 45,14,810/- @ 100% tax sought to be evaded to the amount of Rs. 13,50,147/-. However, we find that ld. CIT(A) has restricted the aforesaid addition to the extent of Rs. 10% of the bogus purchases as against 25% of the bogus purchases made by the assessing officer. The revenue has filed appeal before the ITAT in respect of the quantum addition of Rs. 45,14,810/- made by the assessing officer which was restricted to the extent of 10% of the bogus purchases. However the AO has levied penalty without considering the decision of ld. CIT(A) vide which the profit element embedded in the bogus purchases was estimated @ 10% as against 25% of the bogus purchases estimated by the assessing officer. Further, we consider that addition in the case of the assessee was purely made on estimated basis since the corresponding sales against the purchases was not disputed by the assessing officer. The ld. CIT(A) has deleted the penalty after following the decision of ITAT, Mumbai in the Fancy Diamond (I) Ltd. vs

DCIT ITA No. 961 to 963/Mum/2023 dated 20.06.2023 wherein held that penalty is not leviable in respect of addition made on estimated basis. We have also considered the other decision of ITAT in the case of Bhuraram V. Choudhury vs ITO vide ITA No. 4402 to 4404/Mum/2023 dated 10.07.2024 wherein after following the decision of ITAT, Mumbai in the case of Jatin Enterprise vs ACIT on the proposition that penalty levied in the case of assessee on estimated addition is not sustainable. Following the decision of Co-ordinate Bench of ITAT has referred above, we do not find any error in the decision of Id. CIT(A) in deleting the impugned penalty levied on estimated basis in the case of the assessee. Therefore, all the grounds of appeal of the Revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 31.07.2024.

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 31.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai