

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3188/Mum/2024  
Assessment Year: 2011-12

D R Coats Ink and Resins Pvt. Ltd. 230, New Sonal Link Incl. Estate, Bldg No. 2 Link Road Malad (W) Mumbai - 400064 [PAN: AABCD8645A]	Vs	Deputy Commissioner of Income Tax - 12(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Vimal Punmiya, A/R
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/08/2024  
घोषणा की तारीख/Date of Pronouncement : 14/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dated 22/05/2024, by NFAC, Delhi, pertaining to Assessment Year 2011-12.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty of Rs.8,29,874/- levied by the AO u/s 271(1)(c) of the Act.

3. The roots for the levy of penalty lie in the assessment order dated 30/11/2016 framed u/s 143(3) r.w.s. 147 of the Act. The returned income of the assessee amounting to Rs.1,22,74,851/- was assessed at Rs.2,78,86,243/- after making addition of Rs.1,56,14,393/- on account of alleged bogus purchases.

4. The quarrel relating to the alleged bogus purchases travelled up to this Tribunal in ITA No. 4858/Mum/2017 & C.O. No. 240/Mum/2018 and the Tribunal vide its order dt. 01/04/2021, confirmed the findings of the Id. CIT(A) who restricted the addition on account of alleged bogus purchases to 2% of the profit on account of alleged bogus purchases. The estimated addition of Rs.1,56,14,393/-, made by the AO was re-estimated by the Id. CIT(A) at Rs.24,98,303/- and the penalty was accordingly levied.

5. The notice u/s 274 r.w.s. 271(1)(c) of the Act reads as under:-

**NOTICE U/S 274 READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961**

P.A.N./GIR No. AABCD8645A

Office of the  
Dy. Commissioner of Income Tax-12(2)-1  
Room No-223/ 262, 2<sup>nd</sup> floor,  
Aayakar Bhavan, M K Road,  
Mumbai - 400 020.

Date: 30/11/2016

To,

**M/S. D R COATS INK AND RESINS PVT LTD**  
D R COATS INK AND RESINS PVT LTD, 230 NEW SONAL  
LINK INDUSTRIAL, BUILDING NO 2  
ESTATE LINK ROAD  
MALAD WEST  
MUMBAI - 400064

Sir/Madam,

Whereas in the course of proceedings before me for the assessment year 2011-2012 it appears that you:-

\* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 2(1)(22)(2)(34) of the Indian Income tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)(148) of the Income tax Act, 1961. No. \_\_\_\_\_ dated \_\_\_\_\_ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

\* have without reasonable cause failed to comply with a notice under Section 22(4)(23(2)) of the Indian Income tax Act, 1922 or under Section 142(1)(143(2)) of the income tax Act, 1961. No. \_\_\_\_\_ dated \_\_\_\_\_

\* have concealed the particulars of your income or \_\_\_\_\_ Furnished inaccurate particulars of such Income.

You are hereby required to attend my office at the above address on 20/12/2016 - 03:45 PM and show cause why an order imposing a penalty on you should not be made u/s 271 of the I.T. Act 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c) of the I.T. Act 1961.

Seal



*V. Badoni*  
**(VIBHOR BADONI)**  
Dy. Commissioner of Income Tax-12(2)-1  
Mumbai

*M. A. Gani*  
Director / Authorised Signatory

recd  
02/12/16

6. A perusal of the aforementioned notice shows that, the AO is not sure whether he is proceeding to levy penalty for concealment of the particulars of income or for furnishing inaccurate particulars of income. The Hon'ble Supreme Court in the case of *M/s SSA's Emerald Meadows [2016] 73 taxmann.com 248*, has upheld the order of the Hon'ble High Court holding that notice issued u/s 274 r.w.s. 271(1)(c) of the Act was bad in law as it did not specify under which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated. Similar view was taken by the Hon'ble Bombay High Court in the case of *Ventura Textiles Ltd. v. CIT [2020] 117 taxmann.com 182* and also in the case of *Mohd. Farhan A. Shaikh v. ACIT 125 taxmann.com 253 (Bom) (HC)*.

7. Considering the facts of the present case in totality in light of the judicial decisions discussed hereinabove, the penalty so levied is directed to be deleted.

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

**Order pronounced in the Court on 14<sup>th</sup> August, 2024 at Mumbai.**

*Sd/-*

(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

*Sd/-*

(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 14/08/2024

*SP S/P*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai