

**| 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. 3287, 3288 & 3289/Mum/2024**  
**Assessment Years: 2009-10, 2010-11 & 2011-12**

<b>M/s. Manish Metal</b> Shop No. 72/74 Shree Ram Mandir Marg 1 <sup>st</sup> Pathan Street 4 <sup>th</sup> Kubharwada Mumbai - 400004 <b>[PAN: AAAFM4371Q]</b>	Vs	<b>The Income Tax Officer - 19(2)(5),</b> <b>Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by:	Mr. Akash Prajapati, A/R
Revenue by:	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 14/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 20/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 3287, 3288 & 3289/Mum/2024, are three separate appeals preferred against the orders of the NFAC, Delhi, [in short 'Id. CIT(A)'] even dated 16/05/2024, pertaining to Assessment Years 2009-10, 2010-11 & 2011-12.

2. Since the issues are common in the captioned appeals and the underlying facts resulting into the levy of penalty u/s 271(1)(c) of the Act are common, therefore, these appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The common addition in the captioned appeals relates to the addition of 12.5% of non-genuine purchases.

4. We have given a thoughtful consideration to the orders of the authorities below. The entire quarrel revolves around the purchases made from Manibhadra Metal Industries, Reliable Metal (India), Shree Keshar Impex Metals P. Ltd. and Malwa Metal Corporation. The purchases made from these parties were treated as non-genuine purchases and the AO completed the assessment by estimating the gross profit @12.5% on such non-genuine purchases.

5. Considering the facts, we are of the opinion that the AO has not fully established that, the assessee has concealed his income and made purchases from the grey market. Merely because the profit has been estimated and the assessee chose not to litigate further, would not amount to concealment of income or filing of inaccurate particulars.

5.1. The Hon'ble Supreme Court in the case of *CIT vs. Aarkey Saree Museum* reported in [1991] 187 ITR 147 (Bombay), had the occasion to consider the similar situation and held as under:-

*"5. The Tribunal cancelled the imposition of penalty after recording a finding that the allegation of concealment of income was not proved. The Tribunal rightly recorded in para 8 of its judgement that merely because certain additions were made in the trading account by the Assessing Officer, it did not necessarily follow that the assessee had concealed its income. The above-recorded finding of the Tribunal recorded in para 8 of the judgment is unassailable."*

5.2. Similarly, the Punjab and Haryana High Court in case of *CIT vs. Modi Industrial corporation* [2010] 195 Taxman 68 (P&H), after considering the similar situation, held as under:-

*"A perusal of the order of the Tribunal made it clear that the addition of the income was made only on the basis of estimate. Moreover, it was clear that in original assessment order, there was no finding that the assessee had concealed its income and furnished inaccurate particulars of income; but subsequently after the cancellation*

*of the assessment, the Assessing Officer had proceeded on the basis that the assessee, while inflating electricity charges and undervaluing the closing stock of rice bran, had suppressed the income. Therefore, the additions on account of processing of unaccounted rice bran and under valuation of closing stock of rice bran were made and income was assessed on the estimate basis. Therefore, the Tribunal was right in coming to the conclusion that when the assessment was made on estimate basis, the penalty should not be imposed.*

6. Considering the facts in light of the judicial decisions discussed hereinabove, we do not find any merit in the levy of impugned penalty u/s 271(1)(c) of the Act. We accordingly direct the AO to delete the penalty from each assessment year in appeal.

7. In the result, appeals of the assessee are allowed.

**Order pronounced in the Court on 20<sup>th</sup> August, 2024 at Mumbai.**

*Sd/-*

(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

*Sd/-*

(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 20/08/2024

*SC 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