

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

BEFORE SHRI ANIKESH BANERJEE (JUDICIAL MEMBER) AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

ITA No.3757/Mum/2024
(Assessment Year: 2009-10)

Shripal Bhawarlal Jain Flat No.4, 2 nd Floor, Surya Apartments VP Road,Andheri West, Mumbai-400 058 PAN: ADKPJ1987G	vs	DCIT, Mumbai, Kautilya Bhavan, Mumbai-400 051
APPELLANT		RESPONDENT

Assessee represented by	Shri A.L. Sharma
Department represented by	ShriSwapnil Savant (JCIT)

Date of hearing	09/09/2024
Date of pronouncement	11/09/2024

ORDER

PER ANIKESH BANERJEE (JM):

The instant appeal filed by the assessee is directed against the order of the Learned Commissioner of Income-tax(Appeals), Mumbai (hereinafter, 'Ld.CIT(A)') passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the assessment year 2009-10 dated 27th June 2024. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income-tax-25(1), Mumbai

(in short, 'the Ld.AO'), the order passed U/s 271(1)(c) of the Act, date of order 30/07/2015.

2. The assessee has raised the following grounds of appeal: -

"1 The learned CIT (A) has erred in confirming penalty u/s. 271 (1) (c) of the Act on the appellant at Rs. 8,24,413/-.

2 The learned CIT (A) erred in levy of penalty even though the appellant has submitted all the information and explanations required for the purpose of assessing the income of the appellant.

3 The learned Commissioner of Income tax (Appeals) erred in confirming penalty in spite of the fact the appellant had not submitted any inaccurate particulars.

4 The Appellant craves, leave to add to, amend alter or withdraw any of the above grounds of appeal before or at the time of hearing of the appeal, if necessary."

3. The brief facts of the case are that the assessment was completed under section 143(3) read with section 147 of the Act dated 31/01/2015. The Id.AO found that the assessee has made the 'hawala' transactions as per the information received from the DGIT (Inv) amount to Rs.1,61,69,712/- and assessee purchased the computers which are used for rental purposes. The depreciation was claimed by the assessee @60% amount to Rs.97,01,827/- on computers amount to Rs.1,61,69,712/-. Out of that the Id.AO disallowed depreciation @20% on the depreciation claimed by the assessee which comes to Rs.24,25,456/-. The addition was confirmed amount as Rs.24,25,456/-. The Id.AO initiated penalty proceedings under section 271(1)(c) of the Act, and levied penalty amount to Rs.8,24,413/- being 100% of the tax sought to be evaded. The aggrieved assessee filed an appeal before the Id.CIT(A). But the Id.CIT(A) passed

the order upholding the penalty order. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. The proceedings were initiated as per the information received from DGIT(Inv) relating to bogus purchase / “hawala transactions” made amount to Rs.1,61,69,712/-. The Id. AO treated the purchase of computer as bogus purchase. Finally, the addition was made by disallowing @25% of the depreciation claimed by the assessee amount to Rs.24,25,456/-. The assessee has accepted the quantum addition. But the addition was made on disallowance of depreciation, i.e. expenses claimed by the assessee. The assessee raised the legal point before the CIT(A) and before the Bench whether the penalty can be levied on disallowance of expenses on estimated basis. The issue is squarely covered by the order of the ITAT, Mumbai Bench “A” in the case of **M/s Litura Electrical Technologies Pvt Ltd vs JCIT(OSD) in ITA No.1804/Mum/2024**, date of pronouncement **31/07/2024** where the penalty levied on addition made on estimate basis was deleted. The co-ordinate bench of ITAT-Mumbai relied on the order of the Hon’ble Apex Court in the case of **T. Ashok Pai vs CIT 292 ITR 11 (SC)** and **CIT vs Reliance Petroproducts Pvt Ltd (2010) 322 ITR 158(SC)** has clearly laid down the dictum “that merely making an incorrect claim does not tantamount to furnishing of inaccurate particulars of income. Hence, the penalty levied by the Id.AO on estimated addition which is not sustainable. The Id.CIT(A) in impugned appeal order relied on the order of the Hon’ble Apex Court in the case of **JRD StockBrokers (P) Ltd vs. CIT (2017) 79 taxmann.com184 (SC)**. The issue is dealt with by the Hon’ble Apex Court that the search was initiated under section 132(4) with it include accommodation entries. The levy of penalty under section

158BFAof the Act was justified. The Ld.CIT(A) also relied on the order of co-ordinate bench of **ITAT-Jaipur** in the case of **ITO Ward 2(1) vs Bhansali Trading Corporation (2016) 69 taxmann.com 60 (Jaipur Trib)** where the purchase was made from other parties and assessee was unable to produce the said parties and summons returned back unserved. In the said case also the penalty under section 271(1)(c) was confirmed and decided in favour of the revenue. But on factual matrix in the present appeal, the bogus purchase has never been added back in impugned assessment year. Only part of depreciation @35% is duly allowed which confirmed there is no dispute on impugned purchases of the assessee and the disallowance only @25% of depreciation on estimation basis. Therefore, we do not find any merit in the order of the Id.CIT(A). We respectfully distinguish the orders of the Hon'ble Apex Court and orders of the co-ordinate bench of Jaipur Tribunal relied on by the revenue. We fully relied on the order of the co-ordinate bench, Mumbai in the case of T. Ashok Pai (supra) and Reliance Petroproducts (P) Ltd (supra). Accordingly, the appeal of the assessee succeeds. The penalty levied under section 271(1)(c) amounting to Rs.8,24,413/- is deleted.

5. In the result, appeal of the assessee bearing **ITA No.3757/Mum/2024** is allowed.

Pronounced in the open court on 11th September 2024.

Sd/-

sd/-

(MISS. PADMAVATHY S.)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 11 September, 2024

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai