

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM

ITA No.4109/Mum/2023
(Assessment Year: 2010-11)

Muhammad Taufiq Abubakr Navlakhiya Room No. 617, Piramal Chamber, Morarji Mill Compound, Lalbaug, Parel, Mumbai-400 012	Vs.	Assessing Officer, ACIT Circle-24(1) Room No. 617, Piramal Chamber, Morarji Mill Compound, Lalbaugh, Parel, Mumbai-400 012
PAN/GIR No.ACQPN 5792 A		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Sanjay Parikh
Respondent by	:	Smt. Mahita Nair
Date of Hearing	:	20.06.2024
Date of Pronouncement	:	17.09.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

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

A) Penalty u/s. 271(1)(c) Rs. 6,96,551/-

1) The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] erred on facts and in law in confirming the penalty of Rs. 6,96,551/- levied by the Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi (AO) on the appellant u/s. 271(1)(c) of Rs. 6,96,551/- without discussing the case laws relied on by the appellant and without granting an opportunity of being heard with respect to the case laws relied on by him.

2) The learned CIT(A) erred in not appreciating that the AO had made an addition by estimating 13% of alleged bogus purchases as the income of the appellant, which was reduced by the hon'ble CIT(A) to 8% and hence no penalty u/s. 271(1)(c) could be levied with respect to estimation of income.

3) *The learned CIT(A) failed to appreciate that the appellant was prevented by a reasonable and sufficient cause i.e. fire at the shop, from furnishing the evidences in support of the alleged bogus purchases and the appellant could not be penalised u/s. 271(1)(c) for the said default.*

4) *Appellant prays that the penalty u/s. 271(1)(c) of Rs. 6,96,551/- levied by the AO on the appellant and confirmed by the learned CIT(A) may be deleted.*

B) General

5) *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend delete or modify any of the above grounds of appeal.*

3. Brief facts of the case are that the assessee is an individual and had filed its return of income on 15.10.2010, declaring total income at Rs.21,88,610/-. The assessee's case was selected for scrutiny and the learned Assessing Officer (ld. A.O. for short) passed the assessment order u/s. 143(3) of the Act dated 26.12.2012 determining total income at Rs.23,95,520/-. The assessee's case was then reopened vide notice u/s. 148 of the Act based on the information that the assessee is one of the beneficiary of accommodation entry by way of bogus purchases where the ld. A.O. made an addition of Rs.36,63,093/- being the GP @ 13% on the total bogus purchase of Rs.2,81,77,639/- and determined the total income at Rs.60,58,610/-. The ld. A.O. also initiated penalty proceedings and levied penalty of Rs.6,96,551/- u/s. 271 of the Act for filing inaccurate particulars of income vide order dated 28.03.2022.

4. Aggrieved the assessee was in appeal before the ld. CIT(A), who vide order dated 25.09.2023 upheld the penalty levied by the ld. A.O.

5. Further aggrieved the assessee is in appeal before us, challenging the order of the ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. It is observed that the ld. A.O. has made addition on the alleged bogus purchases

on estimation basis and had levied penalty on the impugned amount under the limb 'for filing inaccurate particulars of income'. It is a settled proposition of law that the penalty levied u/s. 271(1)(c) of the Act on the addition made on estimated basis cannot be sustained as per the various decisions of the co-ordinate benches.

7. The learned Authorised Representative (ld. AR for short) had relied on various decisions to reiterate the said proposition. It is also observed that the assessee before the first appellate authority has contended that the ld. CIT(A) in the quantum appeal has restricted the disallowance to 8% as against 13% disallowance made by the ld. A.O. There is no iota of doubt that the addition in the case of the assessee is made on the estimation of the profit element embedded in such accommodation entries and not on 100% bogus purchases made by the assessee.

8. We, therefore, are of the considered view that no penalty can be levied on an addition which is made on estimated basis. Therefore, we find no merit in levying penalty and, therefore, direct the ld. A.O. to delete the same.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.09.2024

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated :17.09.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai