

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &
SHRI MS PADMAVATHY S, AM,**

**I.T.A. No.4868/Mum/2023
(Assessment Year: 2009-10)**

ACIT-19(3) 513, 5 th Floor, Lalbaug, Parel, Maharashtra-400012.	Vs.	Vinod Hirachand Sanghvi 3/15, Gogari Mansion, Carpenster Street, Charni Road, Mumbai-400004. PAN : AFMPS3101F
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri G.J. Ninawe, Sr. DR
Respondent /Assessee by : Ms. Soniya Bhatia, AR

Date of Hearing : 05.09.2024
Date of Pronouncement : 16.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 31.10.2023 for Assessment Year (AY) 2009-10. The Revenue raised grounds with regard to the partial relief given by the CIT(A) towards the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. The assessee is an individual engaged in the business of trading in Ferrous and Non-ferrous metal under the proprietary concern M/s Radiant Steel. The assessee filed the return of income for the AY 2009-10 on 25.09.2009 declaring an

income of Rs. 11,06,826/-. The return was processed under section 143(1) of the Act. Subsequently, the assessment was re-opened on the basis of information received from DGIT (Inv.) in respect of alleged bogus purchases. The assessment was completed under section 143(3) r.w.s 147 by making peak credit addition of alleged bogus purchases to the tune of Rs. 1,86,43,641/-. The CIT(A) gave partial relief to the assessee by directing the AO to compute the disallowance at 17.50% on the alleged bogus purchases. The Assessing officer (AO) also passed an order under section 271(1)(c) imposing a penalty of Rs. 55,93,092/-. The CIT(A) on the appeal against the penalty order gave partial relief to the assessee by reducing the penalty to the extent of reduced disallowance made in the quantum appeal. The Revenue is in appeal against the partial relief given by the CIT(A) towards penalty under section 271(1)(c) of the Act.

3. The Id. Authorized Representative (AR) submitted that the assessee preferred an appeal before the Co-ordinate Bench against the quantum disallowance confirmed by the CIT(A) to the extent of 17.5% of the alleged bogus purchases and that the Co-ordinate Bench has directed the AO to restrict the addition to 8%. The Id. AR further submitted that the assessee preferred appeal against the order of the CIT(A) partially confirming the penalty under section 271(1)(c) levied by the AO before the Co-ordinate Bench. The Id. AR also submitted that the Co-ordinate Bench has held that where the addition is sustained on the estimated basis no penalty under section 271(1)(c) of the Act can not be levied and accordingly deleted the entire penalty confirmed by the CIT(A). Therefore, the Id. AR submitted that the present appeal by the Revenue is covered by the decision of the Co-ordinate Bench and accordingly should be dismissed.

4. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in assessee's own case for AY 2009-10 to 2011-12 (ITA No. 4473, 4472 & 4470/Mum/2023) has considered the issue of levy of penalty under section 271(1)(c) of the Act contended by the assessee and has held that no penalty could be levied when the addition is sustained on the estimated basis. We further notice that the Revenue is in appeal before us against the order of the CIT(A) for the same AY contending the partial relief given by the CIT(A) towards penalty under section 271(1)(c). The ratio laid down by the coordinate bench while deleting the penalty is that the same is not sustainable when the addition is made on estimation basis. The CIT(A) while giving partial relief deleted the penalty attributable to the reduced disallowance which is on an estimation basis. Therefore, there is merit in the submission of the ld. AR that the issue of levy of penalty under section 271(1)(c) is covered by the above decisions of the Co-ordinate Bench. Respectfully following the above decision, we see no reason to interfere with the decision of the CIT(A) in partially deleting the penalty levied by the AO under section 271(1)(c) of the Act.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 16-09-2024.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai

4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai