

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3959/Mum/2024  
(A.Y: 2011-12)

Kay Kay Synthetics, 201-202, Anna Apartments, 2 <sup>nd</sup> Floor, 14 Main Avenue, Santacruz (W), Mumbai-400054.	Vs.	I.T.O, NFAC, New Delhi.
PAN/GIR No. : AAAFK0934D		
Appellant	..	Respondent

Appellant by :	Shri Vimal Punmiya.AR
Respondent by :	Shri B.B. Nagawe, Sr. DR

Date of Hearing	23.09.2024
Date of Pronouncement	25.09.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order of National Faceless Appeal Centre(NFAC) Delhi / CIT(A), passed u/sec 271(1)(c) and u/sec 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

*“1. The learned C.IT (Appeals), NFAC has erred in law and on facts and circumstances of the case in upholding levy of penalty of Rs. 1,40,050/- u/s. 271(1)(c) of Income Tax Act, 1961 for furnishing inaccurate particulars of income.*

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*2. The Learned C.I.T (Appeals), NFAC has erred in law and on facts and circumstances of the case in not considering the action of the Assessing officer (A.O) in initiating penalty for furnishing inaccurate particulars of income, whereas the A.O vide notice issued u/s. 274 r.w.s. 271 of the Act dated 14-03-2016 has initiated penalty proceedings u/s. 271(1)(c) for concealment of income as well as for furnishing inaccurate particulars of income, thus the penalty order passed is bad in law.*

*3. The Learned C.I.T. (Appeals), NFAC has erred in law and on facts and circumstances of the case in upholding the passing of Penalty Order by the Assessing Officer (A.O), after the expiry of the time limit as prescribed u/s. 275 of the Act, thereby rendering order null and void*

*4.The appellant craves leave your Honour to add to amend alter and / delete any of the above referred grounds of appeal.”*

2. The brief facts of the case are that, the assessee is a partnership firm and is engaged in the business of processing of all kinds of yarn products. The assessee has filed the return of income for the A.Y 2011-12 on 02.09.2011 disclosing a total income of Rs.4,52,360/- and the return of income was processed u/sec 143(1) of the Act. Subsequently, the A.O has received information from DGIT (Inv.) Wing, Mumbai that the assessee has entered into bogus purchase transactions with the parties who are providing accommodation bills as per the information of Sale Tax Department, Govt of Maharashtra and the assessee is one of the beneficiary and obtained

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bogus bills aggregating to Rs.90,64,783/- from 2 parties and hence based on the said information, the A.O. has issued notice u/sec 148 of the Act. The assessee has filed a letter to treat the return of income filed earlier as due compliance to the notice. Subsequently, the notice u/sec 143(2) and u/sec 142(1) of the Act are issued. In compliance, the Ld.AR of the assessee appeared from time to time and submitted the information and the case was discussed. The A.O considering the facts and details submitted by the assessee has dealt on the disputed issue and required the assessee to prove that the purchase transactions are genuine. In compliance the assessee has filed written submissions on various dates in support of the claim but the A.O. was not satisfied with the reply and supporting documents. Finally the A.O. has estimated profit element on non-genuine purchases @ 12.5% which works out to Rs.11,33,097/- and assessed the total income of Rs. 15,85,460/- and passed the order u/s 143(3) r.w.s 147 of the Act on 14.03.2016.

3. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act, Since assessee has entered into bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and the assessee was provided adequate opportunity of hearing and the assessee has filed explanations on various dates

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and explained that on the estimated addition@12.5% made by the AO, on appeal the CIT(A) has directed the AO to calculate profit @ 8% instead of @12.5% on the non genuine purchases. The assessee has filed against the CIT(A) order with the Hon'ble Tribunal and the assessee appeal was partly allowed with the directions to the A.O to compute the profit @ 5% on the non genuine purchases. Whereas the AO was not satisfied with the explanations and details and has levied the penalty of Rs. 1,40,050/- based on the information of the scrutiny assessment and passed the order u/sec 271(1)(c) of the Act on 05.03.2022.

4. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) has considered the grounds of appeal and the submissions of the assessee but has confirmed the action of the A.O in levying the penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the levy of penalty irrespective of the facts and the submissions in appellate proceedings that on the estimated

addition@12.5% made by the AO, on appeal the CIT(A) has directed the AO to calculate profit @ 8% instead of @12.5% on the non genuine purchases. The assessee has filed against the CIT(A) order with the Hon'ble Tribunal and the assessee appeal was partly allowed with the directions to the A.O to compute the profit @ 5% on the non genuine purchases. The Ld.AR contentions are that the penalty cannot be levied on the estimated income and the Ld.AR supported the submissions with the judicial decisions, paper book and synopsis and prayed for allowing the assessee appeal. Per Contra, the Ld.DR relied on the order of CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the assessment order under section 143 r.w.s 147 of the Act. We find the A.O has made adhoc disallowance of bogus purchases on estimation of income but has accepted the sales in the books of accounts. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. Accordingly, we considering the facts, circumstances

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and the ratio of the judicial decisions, set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 25.09.2024

Sd/-  
(GIRISH AGRAWAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 25.09.2024

KRK, PS

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

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai