

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

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2637/Mum/2024 (Assessment Year:2010-11)

ITA No. 2636/Mum/2024 (Assessment Year: 2011-12)

ITO 436 Kautaliya Bhavan, Bandra Kurla Complex, Mumbai-400 051	Vs.	Rajasthan Metal Syndicate Shop No. 12, Govind Bhavan, S. V. Road, Chicholi, Hanuman Temple Malad (W), Mumbai-400 064
PAN/GIR No.AAAFR 1088 F		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Smt. Mahita Nair
Date of Hearing	:	11.09.2024
Date of Pronouncement	:	28.10.2024

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.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) 2011-12

2. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

3. As the facts are identical in both these appeals, we hear by dispose of these appeals by a consolidated order by taking ITA No. 2637/Mum/2024 as a lead case.

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3. The Revenue has challenged these appeals on the ground that the Id. CIT(A) has erred in deleting the penalty levied u/s. 271(1)(c) of the Act on the ground that penalty on an addition made on estimate basis cannot be sustained.

4. The brief facts are that the assessee is engaged in the business of dealers and stockiest of ferrous and non-ferrous metals and had filed its return of income dated 26.09.2010, declaring total income at ₹1,30,520. The assessee's case was reopened vide notice u/s.148 dated 26.09.2010 for the reason that based on the information from sales tax department and DGIT (Investigation), Mumbai that the assessee was beneficiary of accommodation entry by way of bogus purchase bills availed from accommodation entry providers to the tune of ₹57,59,529.

5. The Id. learned Assessing Officer ('Id. A.O.' for short) passed the assessment order u/s.143(3) r.w.s. 147 of the Act dated 14.03.2016, where the total income was determined at Rs.8,50,470 after making an addition/disallowance on the alleged bogus purchase amounting to ₹7,19,941 being 12.50 % of the said bogus purchase. The Id. A.O. initiated penalty proceeding u/s. 271(1)(c) of the Act for concealment of income and levied penalty of ₹2,22,463 being 100% of the tax sought to be evaded.

6. Aggrieved the assessee was an appeal before the first appellate authority, who vide order dated 20.02.2024, deleted the impugned penalty by holding that addition made on estimate basis cannot be held to be concealment of income.

7. The Revenue is an appeal before us challenging the order of the Id. CIT(A).

8. We have heard the learned Departmental Representative (Id. DR for short) and perused the materials available on record. It is observed that the Id. A.O. had made an addition on the bogus purchases by gross profit at the rate 12.50% which was upheld by the Id. CIT(A) and restricted to 8%, by the tribunal in an appeal preferred by the assessee. The Id. CIT(A) has deleted the impugned penalty by holding that penalty levied on an addition made on estimate basis cannot be sustained. There is no iota of doubt that the addition in the case of the assessee was made on the estimation of the profit element embedded in such accommodation entries and not on 100% bogus purchases made by the assessee.

9. We, therefore, are of the considered view that no penalty can be levied on an addition which is made on estimated basis. Hence, we find no infirmity in the order of the Id. CIT(A) in deleting the penalty levied by the Id. A.O. The grounds of appeal raised by the Revenue are hereby dismissed.

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10. The findings applied in ITA No.2637/Mum/2024 will apply *mutatis mutandis* to this appeal also.

11. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 28.10.2024

Sd/-

(O P Kant)

Accountant Member

Mumbai; Dated :28.10.2024

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