

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2058/Mum/2024
Assessment Year: 2009-10**

ACIT-14(1)(2), Mumbai	vs.	Gits Food Products Private Limited 404/405, Balarama Bandra Kurla Complex, Bandra East, Mumbai-400051. PAN: AAACG 1345 D
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vishal D. Shah
Revenue by : Shri Preetam Kumar H. Turerao, Sr. DR

Date of Hearing : 06.08.2024
Date of Pronouncement : 21.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the revenue for the assessment year 2009-10 is directed against the order dated 21.02.2024 passed by the ld. Commissioner of Income-tax (Appeal), NFAC, Delhi. The revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the penalty levied u/s 271(1)(c) of the Act ignoring the fact that the penalty is levied on account of furnishing inaccurate particulars of income by way of bogus purchases made by the assessee and as per the provisions of the Income Tax Act, 1961 levy of penalty is inevitable on the amount of addition made on account of non-genuine transactions.

2. The appellant prays that the order of the ld. CIT(A) on the above grounds be set aside and that of the assessing officer be restored.

3. The appellant craves leave to amend, or alter, any grounds or add a new grounds which may be necessary.”

2. Fact in brief is that information was received from the Sales Tax Department that assessee had made purchases from the parties involved in giving accommodation entries without supplying of goods. The case of the assessee was reopened u/s 147 of the Act and the assessing officer disallowed 25% of such purchases of Rs. 64,60,050/- which comes to Rs. 16,15,013/- and added to the total income of the assessee. In appeal, the ld. CIT(A) held that only the profit element embedded in such purchases can be added to the income of the assessee therefor he restricted the disallowance to the 12.5% of such purchases. Thereafter, vide order u/s 271(1)(c) of the Income Tax Act the assessing officer has levied penalty u/s 271(1)(c) of the Act to the amount of Rs. 2,74,470/- for filing inaccurate particulars of income. The ld. CIT(A) has deleted the penalty levied on estimated basis after referring the judicial findings of the various ITAT benches holding that penalty levied on estimated basis is not justified.

3. Heard both the sides and perused the material on record. The ld. CIT(A) has sustained the addition on estimated basis to the extent of 12.5% of the alleged purchases on the basis of profit element embedded in such purchases. The assessing officer has levied penalty of Rs. 2,74,470/- for filing inaccurate particulars of income on the amount of addition sustained by the ld. CIT(A). The ld. CIT(A)

has deleted the impugned penalty levied on estimated basis after referring the decision of ITAT Mumbai in the case of V.K. Ispat & Alloys vs ITO-17(3)(5) in ITA Nos. 2326 & 2325/Mum/2022 dated 21.01.2023, Mukesh Shaligram Sharda vs ITO, Ward-1(2), Kalian in ITA No. 1907 & 1908/Mum/2021 dated 22.02.2023 and ITO, Ward-1(5), Thane vs Shri Hemant Manohar Takle in ITA No. 356, 357 & 258/Mum/2019 dated 23.01.2020 on the proposition that the penalty u/s 271(1)(c) of the Act cannot be levied where the addition is made on estimated basis. In the light of the above findings, we observe that in the case of the assessee, the sales were not disputed and only the profit element embedded in the transaction was estimated. Before us, the ld. Counsel has also referred the decision of ITAT, Rajkot in the case of Anil Abhubhai Odedara vs ITO, Ward-3(1) wherein held that no penalty u/s 271(1)(c) can be imposed where income of the assessee was determined on estimated basis. The ld. Counsel has also referred the decision of Hon'ble High Court of Punjab & Haryana High Court in the case of CIT, Patiala vs Sangrur Vanaspati Mills Ltd. wherein held that when addition had been made on the basis of estimation and not on account of any concrete evidence of concealment, then penalty u/s 271(1)(c) was not leviable. In the light of the above facts and findings, we consider that in the case of the assessee, the addition was made only on the estimated basis of profit element involved in the purchase transaction without disproving the corresponding sales shown by the assessee therefore following the various decision as referred above we do not find any infirmity in the decision of ld. CIT(A). Accordingly, the ground of appeal filed by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.10.2024.

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai