

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

| <b>ITA No.</b> | <b>A.Y.</b> | <b>Appellant</b>  | <b>Respondent</b>  |
|----------------|-------------|---|--|
| 4967/Mum/2024  | 2010-11     | Atul Properties,<br>5 <sup>th</sup> Floor,<br>Trade Avenue,<br>Suren Road,<br>Andheri (E),<br>Mumbai<br>[PAN: AAMFA3756F] | ACIT,<br>Circle-24(1),<br>Piramal<br>Chamber,<br>Lalbaugh, Parel,<br>Mumbai. |
| 4968/Mum/2024  | 2011-12     |   |  |

Assessee by : Ms. Neha Anchalia  
Revenue by : Shri Ram Krishn Kedia, Sr. DR

Date of Hearing : 06/11/2024  
Date of Pronouncement : 06/11/2024

**PER BENCH :**

Both these appeals filed by the assessee are directed against the order(s) passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and relate to AYs. 2010-11 and 2011-12. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the penalty levied by the AO u/s. 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. The Ld.AR submitted that the issue in both these years is related to penalty levied on the addition pertaining to the alleged bogus purchases. She submitted that certain purchases made by the assessee were considered to be bogus in nature and accordingly, the AO disallowed 100% of the purchases, treating them as ‘non-genuine’.

3. In the appellate proceedings, the Ld.CIT(A) restricted the additions to 12.5% of the value of the alleged bogus purchases. After order passed by the Ld.CIT(A) in both the years, the AO passed the impugned penalty order(s)u/s. 271(1)(c) of the Act, levying penalty on the amount of addition sustained by the Ld.CIT(A) in both the years. The Ld.AR submitted that the addition has been sustained by the Ld.CIT(A) on estimated basis and hence penalty could not have been levied on estimated additions. In support of this proposition, the Ld A.R placed here reliance on the following case law:-

- a. ETCO Profiles (P.) Ltd., vs. ACIT [2015] 61 taxmann.com 470 (Mumbai-Trib.);
- b. Jatin Enterprises vs. ACIT, 2024 (3) TMI 1073 – ITAT Mumbai;

3.1. The Ld.AR further submitted that the ratio of the above said decisions shall squarely apply to the facts of the present cases and accordingly prayed that the penalty levied in both the years may kindly be deleted.

4. The Ld.DR, on the contrary, submitted that the Ld.CIT(A) has sustained the addition to the extent of 12.5% only for the reason that the purchases accounted by the assessee are bogus in nature. Accordingly he submitted that the penalty levied by the AO in both the years has been rightly confirmed by the Ld.CIT(A).

5. We heard the parties and perused the record. The question as to whether penalty can be levied u/s. 271(1)(c) of the Act on the additions made on the estimation basis was examined by the Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries [360 ITR 580] and it was held that - *no penalty u/s. 271(1)(c) of the Act is leviable where the addition is made on estimated basis*. The Hon'ble Punjab & Haryana High Court has also expressed the same

view in the case of CIT vs. Sangrur Vanaspati Mills Ltd., [303 ITR 53]. Both these decisions have been followed by the Mumbai Benches of the Tribunal in the case of Jatin Enterprises vs. ACIT (supra).

5.1. In the instant case, the AO has added 100% value of bogus purchases. However, the Ld.CIT(A) has restricted the addition to the extent of 12.5%, meaning thereby the addition has been sustained by the Ld.CIT(A) on estimated basis. The Hon'ble Rajasthan and Punjab & Haryana High Courts have expressed the view that the penalty u/s. 271(1)(c) of the Act is not leviable when the addition is made on estimation basis. Accordingly, following the above said decision, we hold that the penalty u/s. 271(1)(c) of the Act is not leviable in the present cases. Accordingly, we set aside the order passed by the Ld.CIT(A) in both the years under consideration and direct the AO to delete the penalties levied in both the years.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 06-11-2024

Sd/-  
[RAJ KUMAR CHAUHAN]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 06-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai