

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI MS. PADMAVATHY S, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 1336/MUM/2024
(Assessment Year : 2010-11)**

Blue Jet Healthcare Limited 701-703, Bhumiraj Costaricka, Sanpada, Navi Mumbai 400705.	Vs.	Asstt. Com. Of I.T.Circle -1 1 st Floor, Mohan Plaza, Wayale Nagar, KhadakPada, Kalyan (W), 421301.
PAN/GIR No. AAACJ4203H		
(Appellant)	..	(Respondent)

Assessee by	Shri. Haresh P. Shah
Revenue by	Shri. Ashok Kumar Ambastha - SR. AR
Date of Hearing	19/08/2024
Date of Pronouncement	08/11/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 25.01.2024 passed in Appeal no. CIT(A), Thane-2/10147/2018-19 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2010-11, wherein learned CIT(A) has confirmed the penalty order dated 27.03.2018 passed u/s. 271(1)(C) of the Act.

2. The brief facts related to the appeal state that assessee filed its return of income on 15.10.2020 for A.Y. 2010-11, declaring total income of Rs. 45,26,910/-. The return was processed u/s. 143(1) of the Act. Subsequently, the case was reopened, on the basis of information received from the sales tax department, Mumbai regarding bogus purchases of Rs. 84,18,995/- made by the assessee from Hawala entry provider during F.Y. 2010-11. The assessment was assessed u/s. 143(3) r/w 147 of the Act vide order dated 05.03.2015, assessing total income of Rs. 1,30,27,405/-, thereby making an addition of Rs. 84,18,995/- i.e @ 100% of bogus purchase. Penalty proceedings u/s. 271(1)(C) of the Act were initiated and penalty amounted to Rs. 30,04,017/- was levied, vide penalty order dated 27.03.2018. Assessee preferred an appeal before learned CIT(A), who dismissed assessee's appeal and confirmed the penalty order dated 27.03.2018.
3. The appellant assessee is in appeal before this Tribunal on the ground that learned CIT(A) has erred in confirming the penalty order, ignoring the fact that the said addition is based merely on estimation basis.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
5. We have perused the records and heard learned representatives for both the parties.

6. The main point for determination under appeal is as to whether the penalty levied upon the assessee u/s. 271(1)(C) of the Act is sustainable under law?
7. Learned AR has argued that the penalty cannot be levied merely by assessing the income on estimation basis. He has referred order dated 21.03.2023 passed by the co-ordinate bench of ITAT Mumbai in ITA No. 3885/MUM/2023 for (A.Y. 2009-10), Jatin enterprises V ACIT-19(2), Mumbai and order dated 22.07.2024 passed by the ITAT Mumbai bench in ITA No. 641/MUM/2024 for (A.Y. 2010-11), ITO-26(2)(1) V Sunil Bhagwandas Vorani (HUF) in support of his submissions. Learned AR has further referred order dated 28.02.2018 passed by the co-ordinate bench of this Tribunal in ITA No. 3707/MUM/2017 (A.Y. 2010-11), which is part of assessee's paper book at pages from 36 to 57 and submitted that the Tribunal has restricted the addition to 12.50% of bogus purchases only.
8. Learned DR has vehemently supported the impugned order.
9. After having gone through the entire material on record, we find that the relevant part of ITAT order dated 21.03.2024 in ITA No. 3885/MUM/2023 (A.Y. 2009-10), in Jatin enterprises V ACIT-19(2), vide para 5, reads as under:

“ 5. The Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580 has held that where addition is made purely on estimate basis, no penalty u/s. 271(1)(c) of the Act is leviable. Similar view has been expressed by the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53. The Hon'ble High Court approving the order of Tribunal held that when the addition has been made on the basis of estimate and not on any concrete evidence of

concealment, penalty u/s. 271(1)(c) of the Act is not livable. The Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd. reported as 221 ITR 110 has taken a similar view in respect of penalty levied u/s. 271(1)(c) of the Act on estimated additions. There are catena of decisions by different High Courts and various Benches of the Tribunal wherein penalty levied u/s. 271(1)(c) of the Act on estimated additions has been held to be unsustainable.”

10. The co-ordinate bench of this Tribunal in Sunil Bhagwandas Vorani (HUF) (Supra), vide para 5 & 6, held as under:

“5. As is evident from para 5.6 of the Ld. AO's order, the Ld. CIT(A) has restricted the additions of @25% of non-verifiable purchases debited to the trading account, this shows that that Ld. CIT(A) while confirming the addition in quantum appeal has done so on estimate basis. The Hon'ble Karnataka High Court in the case of CIT Vs. Parasamal Babulal Jain, ITA No. 20 of 2006, order dated 14.09.2011, has held that the penalty u/s. 271(1)(c) is not attracted where addition made on estimate basis. The said order reads as under:

“Penalty cannot be levied on the disallowance of expenses made on estimate basis. If no facts are brought on record that any income has been concealed by the assessee or the assessee has furnished inaccurate particulars. It is because of the disallowance of the of the expenditure the total amount representing total income is enhanced to the extent of disallowance. Conditions which are to be fulfilled before section 271(1)(c) is attracted do not exist.”

6. In this case as is evident from the observation of the para 5.1 of the Ld. AO's order, the addition was made on estimation of total turnover after rejecting the books of accounts. Notice u/s. 133(6) were also issued to the various purchase parties and all the notice were returned by the postal authority and the assessee has not produced the party to confirm the same. These observation of the lower authorities shows that it is not established by the revenue that the assessee had concealed the particulars of income or has submitted inaccurate particulars of income so as to attract Section 271(1)(c) of the Act. Admittedly, the addition has been made on estimate basis, therefore, the ratio of judgment of the Karnataka High Court referred (supra) and various pronouncements of the judicial ITAT covers the facts of the present case of the assessee. Since the addition was made on the estimate basis and for the aforesaid discussion, the penalty is not sustainable and rightly deleted by the Ld. CIT(A). We find no illegality in the order of the Ld. CIT(A) and same is accordingly confirmed.”

11. In the instant case, learned CIT(A) has specifically mentioned that the Tribunal, in quantum appeal, has

restricted the addition to 12.5% of bogus purchases. However, learned CIT(A) has treated the bogus purchase amount debited by the assessee in its P&L Account as concealment of particular of income. Learned CIT(A) has failed to appreciate the core spirit of the Tribunal's order that the restriction is based merely on the estimation basis only. Hence, in view of what has been held in above referred decisions, we hold that the penalty levied u/s. 271(1)(C) of the Act is unsustainable under law. The aforesaid point is accordingly determined in favour of the assessee and against the revenue. The assessing officer is directed to delete the penalty.

12. In the result, the appeal is allowed in above terms. The impugned order dated 25.01.2024 and penalty order dated 27.03.2018 are set aside.

Order pronounced on 08.11.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 08/11/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai