

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.182/Mum/2024
(Assessment Year :2010-11)**

Shri Pravin Champalal Bokadia 77, Dr. Mahimtura Marg, Kumbharwada Near CP Tank Mumbai – 400 004 Maharashtra	Vs.	ITO, Ward-19(2)(5) Mumbai
PAN/GIR No.AAQP4778E		
(Appellant)	..	(Respondent)

Assessee by	Shri Neelkanth Khandelwal (virtually present)
Revenue by	Shri Manish Ajudiya
Date of Hearing	21/11/2024
Date of Pronouncement	27/11/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 22/12/2023 passed by CIT(A)-52, Mumbai in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2010-11.

2. The assessee is merely aggrieved by levy of penalty of Rs.36,54,627/- on account of alleged accommodation entry in form of issuing bogus sale / purchase bills and that assessee has taken bogus purchases from four parties for sums aggregating to Rs.1,18,27,274/-.

3. Here in this case, the return was filed on 30/09/2010 at income of Rs.4,66,526/- for A.Y.2010-11. Later on, on the basis of some information received from Sales Tax department that assessee has taken some bogus purchases from four parties aggregating to Rs.1,18,27,274/- and accordingly, based on this information, addition has been made from the entire purchases.

4. Since assessee could not respond to the notices, the assessment was completed *ex parte* u/s.144 / 147. Penalty has also been confirmed on the ground that assessee had not responded and accordingly, penalty has been confirmed of furnishing of inaccurate particulars of such income of Rs.36,54,627/-. The same has also been confirmed by the Id. CIT(A) on the ground that enquiry notices sent u/s.133(6) issued by the Id. AO has been returned back.

5. We have heard both the parties and also perused the relevant facts and material on record. The assessee is an individual engaged in the business of trading in ferrous and non-ferrous metal. Since its account was duly audited and based on audit report return of income was filed. It has been stated that assessee was represented by one Shri Ramesh Doshi, a

practicing tax consultant and he has submitted the requisite details before the ld. AO and had also personally appeared who had then postponed the hearing. An affidavit of Shri Ramesh Doshi has also been filed before us. Further, assessee had also filed a letter before the ld. AO that quantum proceedings are still pending and has not been disposed of. Therefore, the penalty proceedings should be kept in abeyance. However, without waiting for the quantum order, ld. AO has levied the penalty.

6. Even before the ld. CIT (A) this fact was duly brought to the notice of the ld. CIT(A) which has been noted at page 4 of the impugned order. However, the ld. CIT (A) too has confirmed the penalty without even bothering to look into the fact that quantum appeal is still pending before the ld. CIT(A) since 2016. Now even after 8 years, the quantum proceedings have not been disposed but still, the ld. CIT(A) has passed the penalty order and confirm the penalty. First of all, once the quantum proceedings were pending, the penalty could not have been levied and *secondly*, even if it is an *exparte* order by the ld. AO, the entire purchases could not be treated as 'bogus purchase to disallow the entire purchases, once the corresponding sales have been accepted and there is no dispute regarding the quantity purchased outside the books. Thus, entire purchase cannot be added. At the most it could be the case of suppressed profit for which at the most GP rate could have been applied. Since quantum addition is still subject matter pending before the ld. CIT (A), therefore, it was too premature to confirm the penalty. Accordingly, the penalty levied on such addition is deleted for the

reason that ld. AO cannot levy the penalty on entire bogus purchases when books of accounts have been accepted including the trading results and there is no dispute regarding the quantitative purchases and corresponding quantitative sales and the source of purchases are from the books. Thus, the penalty levied by the ld. AO is deleted.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 27th November,2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 27/11/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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