

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

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

**ITA No.5307/Mum/2024
(Assessment Year :2010-11)**

DCIT, Circle-14(1)(1) Room No.432, 4 th Floor Aayakar Bhavan M.K.Road Mumbai – 400 020	Vs.	M/s. Offshore Marinetech Pvt. Ltd. 51/2421, Nishigandha Gandhinagar Bandra (East), Mumbai – 400 051
PAN/GIR No.AAACO9230H		
(Appellant)	..	(Respondent)

Assessee by	None
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 Revenue against order dated 13/08/2024 passed by NFAC, Delhi in relation to penalty proceedings u/s.271(1)(c) for the A.Y.2010-11.

2. The Revenue is aggrieved by the deletion of penalty of Rs.4,27,573/- on account of estimated GP @12.50% on the alleged bogus purchases of Rs.1,10,69,853/-.

3. The ld. Assessing Officer in the course of assessment proceedings had estimated the GP rate of 12.5% of alleged bogus and non-genuine purchases of Rs.1,10,69,853/- and made addition of Rs.13,83,730/-. Since assessee had not preferred any appeal against such estimation of GP rate, the ld. AO has levied the penalty.

4. The ld. CIT(A) has deleted the penalty after observing as under:-

“During the course of assessment, the AO treated purchases from some parties as bogus purchases and passed his assessment order making an addition of Rs 13,83,730/- on adhoc basis, which was 12.5% of the alleged purchases of Rs 1,10,69,853 and penalty us 271(1)(c) of the I Tax act was initiated, and later imposed.

I have gone through the facts of the case.

The jurisdictional Mumbai ITAT decision in Asstt. Commissioner of Income Tax Circle-13(3)(1), Mumbai v/s Remi Electrotechnik Ltd. (ITA no.6375/Mum. /2019), fits in here perfectly.

The ITAT sums up as:

Considered the submissions of the learned Departmental Authorities and perused the material on record. As it transpires from the record available before us that the Assessing Officer levied penalty under section 271(1)(c) of the Act on estimate basis without any evidence on record with regard to concealment of income. Penalty under section 271(1)(c) of the Act is leviable to be imposed only where the assessee has concealed its particulars of income or furnished inaccurate particulars. Action of making addition on ad-hoc basis does not result into imposition of penalty u/s 271(1)(c) of the Act and hence cannot be termed as either concealment or furnishing of inaccurate particulars of income. We find support from the series of decisions by

different High Courts as well the decision of the Co-ordinate Benches of the Tribunal, wherein it was held that when addition is made on estimate basis, penalty is not sustainable in the eyes of law.

Respectfully following the decision of the jurisdictional ITAT, I direct the AO to delete the penalty.

APPEAL IS ALLOWED.”

5. Here in this case, the ld. AO had applied GP rate of 12.5% while making the addition on account of alleged bogus purchases which has been reduced further by the Tribunal in the quantum proceedings. It is not in dispute that the source of its purchases is from the books that there is no discrepancy with regard to quantity of purchases and corresponding quantity of sales. Once no such discrepancy in the trading account has been found, then merely because addition has been sustained by applying adhoc GP rate, it cannot be said that it is a case of furnishing inaccurate particulars of income or concealment of income and accordingly, the order of the ld. CIT (A) deleting the penalty is upheld and consequently the grounds raised by the Revenue are dismissed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced on 27th November, 2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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

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