

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 5636/Mum/2024
Assessment Year : 2009-10

Manoj Shantilal Mehta, B-504, Rajshree Residency, Mavroji Cross Lane, Ghatkopar (West), Mumbai. PAN : ACJPM8523H	vs.	Income Tax Officer, Ward-27(2)(2), 4 th Floor, Vashi Railway Station, Navi Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Ketan Gada
For Revenue :	Shri R.R. Makwana, Sr.DR

Date of Hearing :	11-12-2024
Date of Pronouncement :	11-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 30-08-2024 passed by the Ld.CIT(A)-NFAC, Delhi, confirming the penalty of Rs.5,12,499/- levied by the AO u/s.271(1)(c) of the Income Tax Act, 1961 ('the Act').

2. The Ld.AR submitted that the AO reopened the assessment of the year under consideration on the reasoning that the assessee has availed accommodation bills in the form of bogus purchases and disallowed purchase value of Rs.1.65 crores. When the matter reached ITAT, the

Tribunal, vide its order dt.29-05-2018 passed in ITA No. 1227/Mum/2016 and C.O.No. 267/Mum/2017, restricted the addition to 4% of the value of the alleged bogus purchases. Thereafter, the AO levied a penalty u/s. 271(1)(c) of the Act of Rs.5,12,499/- on the addition so sustained by the ITAT. The said penalty was confirmed by the Ld.CIT(A).

3. The Ld.AR submitted that the addition was finally made on estimated basis and it cannot be treated as either as a case of concealment of income or furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Co-ordinate Bench of the Tribunal in the case of ITO vs. Shri Jignesh Amrutlal Shah in ITA No.1267/Mum/2019, dt. 13-03-2020, wherein penalty u/s 271(1)(c) of the Act levied on estimated addition was deleted. In the above said case, the Co-ordinate Bench of the Tribunal has taken support of the decision rendered by the Hon'ble Punjab & Haryana High Court in the case of Harigopal Singh vs. CIT [258 ITR 85] and also the decision rendered by the Hon'ble Delhi High Court in the case of CIT vs. Aero Traders Pvt. Ltd., [322 ITR 316], wherein the Hon'ble High Courts have held that the estimate of profit on the turnover of the assessee does not amount to concealment of particulars of income or furnishing of inaccurate particulars of income. Accordingly, the Ld.AR prayed that the penalty levied u/s.271(1)(c) of the Act may be deleted.

4. We heard the Ld.DR and perused the record. The admitted fact is that the Tribunal has restricted the addition relating to alleged bogus purchases by estimating the profit element involved therein @4%. In the decisions relied upon by the assessee (referred supra), it has been held that the penalty u/s.271(1)(c) of the Act cannot be levied in respect of the additions made on estimated basis. Accordingly, following the above said

decisions, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the impugned penalty levied u/s.271(1)(c) of the Act for the year under consideration.

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

Order pronounced in the open court on 11-12-2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date: 11-12-2024

TNMM

Copy to :

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

By Order

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