

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 6465/Mum/2024

Assessment Year: 2009-10

Sandeep Kewalchand Mehta B-3, Bldg No. 3 SaiBaba Enclave Behind CITI Centre, Goregaon West Maharashtra - 400062 [PAN: AFNPM2440Q]	Vs	ACIT - 31(3)
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Bhupendra Shah, A/R
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 13/02/2025

घोषणा की तारीख /Date of Pronouncement: 19/02/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 01/10/2024 by NFAC, Delhi [hereinafter 'the Id. CIT(A)], pertaining to AY 2009-10.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Act amounting to Rs. 1,84,771/- on alleged estimated profits on the addition of unverified purchases. The roots of the levy of penalty lie in the assessment order dated 30/03/2015 framed u/s 143(3) r.w.s. 147 of the Act wherein, during the course of the scrutiny assessment proceedings, on the basis of the information received from the Sales-tax authorities, the AO came to know that the assessee has made bogus

purchases from *hawala* parties amounting to Rs.43,48,834/-. The entire amount was added to the income of the assessee.

3. The quarrel travelled up to the Tribunal and the Tribunal vide its order dated 31/10/2017, restricted the quantum addition at 12.5% of the bogus purchases.

3.1. Pursuant to the order of the Tribunal, penalty proceedings were initiated u/s 271(1)(c) of the Act, and a penalty of Rs.1,84,771/- was levied.

4. Before us, the Id. Counsel for the assessee vehemently stated that since the quantum addition has been estimated, no penalty should be levied on estimation of profit. Strong reliance was placed on the decision of the Co-ordinate Bench in the case of *DCIT vs. M/s. Unisynth Chemicals in ITA No. 5967/Mum/2014* and the judgment of the Hon'ble Supreme Court in the case of *Reliance Petro Products Pvt. Ltd. (2010) 322 ITR (SC)*. It is the say of the Id. Counsel that considering several precedents, penalty should not be levied for the impugned estimated addition.

5. Per contra, the Id. D/R pointed out that no estimation was made. The AO added the entire bogus purchases whereas the Tribunal restricted the addition to 12.5% of the bogus purchases being the profit element imbibed in such bogus purchases. Therefore, it cannot be said that the profit has been estimated and the penalty has been levied on estimated profits.

6. We have given thoughtful consideration to the rival contentions. The undisputed fact is that the additions were made on account of

bogus purchases and the quarrel travelled up to the Tribunal and the Tribunal restricted the quantum addition at 12.5% of the bogus purchases. We do not find any merit in the contention of the Id. Counsel that the profit has been estimated and the penalty has been levied on estimated profit. Facts on record show that there were bogus purchases and only the profit element has been added which means that the assessee has concealed the income to this extent in the garb of purchases which turned out to be bogus. Therefore, considering the facts of the case in totality, we have no hesitation in confirming the penalty so levied u/s 271(1)(c) of the Act. Accordingly, the effective ground/s raised by the assessee are dismissed.

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

Order pronounced in the Court on 19th February, 2025 at Mumbai.

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 19/02/2025

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai