

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 3285/MUM/2024
Assessment Year: 2009-10**

Hitesh Jayantilal Modi (HUF)
B-302, Mahvideh, Near Municipal
Garden, Chandavarkar Road,
Borivali West,
Mumbai-400092.

PAN NO. AABHH 3508 K
Appellant

Income-tax Officer- Ward 32(1)(5),
Kautilya Bhavan,
Mumbai.

Vs.

Respondent

Assessee by : Mr. Manoj Mundra
Revenue by : Mr. Hemanshu Joshi, Sr. DR

Date of Hearing : 09/12/2024
Date of pronouncement : 18/02/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 26.10.2023 passed by the Ld. Commissioner of Income-tax – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, in relation to penalty u/s 271(1)(c) of the



Income-tax Act, 1961 (in short 'the Act') levied by the Assessing Officer.

2. The grounds raised by the assessee are reproduced as under:

1. Under the facts and in law, the learned CIT(A) erred in confirming levying of penalty w/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 4,61,734/-.

2 1.1 Under the facts and in law, the learned CIT(A) erred in confirming that the appellant is guilty of furnishing inaccurate particulars of income liable for levy of penalty us 271(1)(c) of the Income Tax Act, 1961.

1.2 Under the facts and in law, the learned CIT(A) failed to appreciate the submissions made by the appellant and also the fact that, addition is made on estimate basis and no penalty u/s 271(1)(c) of the Act can be levied where addition is made on estimate basis.

3. We have heard rival submissions of the parties and perused the relevant materials on record. In the case, the Assessing Officer made addition in respect of bogus purchases on estimate basis @ 12.5% of the bogus purchases amount and accordingly initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of the income. After considering submission of the assessee, the Assessing Officer levied penalty vide order dated 30.03.2019. On further appeal, the Ld. CIT(A) also sustained the said penalty. Before us, the Ld. counsel for the assessee submitted that addition has been made on estimate basis and therefore, relying the decision of Coordinate Bench of Tribunal in the case of **M/s S4 Interior in ITA No. 4422/Mum/2017** for assessment year 2009-10, the penalty is liable to be cancelled. We find that in the



said case, the Co-ordinate Bench of the Tribunal has held that the Assessing Officer made addition on estimate basis which was merely in the nature of unproved claim and not a claim which was disproved on the basis of irrefutable documentary evidences. The relevant finding of the Tribunal is reproduced as under:

“7. We have further deliberated at length on the contentions advanced by the authorized representatives of both the parties, in the backdrop of the merits of the case. We find, that admittedly it is a case where the A.O had on an estimate basis made an addition of 12.5% of the value of the unproved purchases. Further, on a perusal of the orders of the lower authorities, it emerges that the A.O had declined to accept the genuineness and veracity of the purchase transactions under consideration, for the reason, that the documentary evidence produced by the assessee to substantiate the same, were not found by him to his satisfaction. We are of the considered view, that the addition made by the A.O on an estimate basis is merely backed by an unproved claim of the assessee, and not a claim which was disproved to the hilt on the basis of irrefutable documentary evidence by the revenue. In the backdrop of the aforesaid facts, it can safely be concluded that though the unproved purchases would justify an addition in the hands of the assessee, however, no penalty under Sec. 271(1)(c) merely on the said basis could have been validly imposed. We find that our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Upendra V. Mithani (ITA (L) No. 1860 of 2009), dated 05.08.2009, wherein it was observed as under:-

“The issue involved in the appeal revolves around deletion of penalty under Section 271(1)(c) of the I.T. Act. The Tribunal has concurred with the view taken by the Commissioner of Income Tax (A). The Commissioner of Income Tax (A) has rightly taken a view that no penalty can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. If the assessee gives an explanation which is unproved but not disproved, ie. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false. The view taken by the Tribunal is a



reasonable and possible view. The appeal is without any substance. same is dismissed in limine with no order as to costs."

We are of the considered view, that the assessee in the case before us had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforementioned parties, by placing on record the documentary evidence as was called for by the A.O. However, we cannot also remain oblivious of the fact that as the assessee had evidenced the purchase transactions under consideration, by placing on record certain documents viz. invoices, ledger accounts of parties, bank statements etc, the authenticity of which had neither been dislodged or disproved by the lower authorities, therefore, the same in itself takes the case of the assessee beyond the realm of the penal provisions contemplated under Section 271(1)(c). We further find that the Hon'ble Supreme Court by dismissing the 'Special leave Petition' (SLP) of the revenue in CIT-2 Lucknow Vs. U.P State Bridge Corporation Ltd. (SLP) (Civil) (2018) 97 Taxman.com 279 (SC), had recently upheld the order of the Hon'ble High Court of Allahabad. In the aforesaid case, the High Court had observed that where a claim of expenditure is neither found inaccurate, nor could be viewed as concealment of income on the part of the assessee, then merely because the said claim was not accepted or acceptable to the revenue, that by itself would not attract penalty under Sec. 271(1)(c). Now, in the case before us, as the revenue had failed to disprove to the hilt on the basis of clinching documentary evidence, the authenticity of the claim of the assessee of having made purchases from the aforementioned parties, therefore, merely on the basis of the unproved claim of purchases, no penalty under Sec. 271(1)(c) could have been validly imposed on the assessee."

3.1 In the instant case, the Assessing Officer has estimated the profit in respect of bogus purchases without brining on any clinching material to establish furnishing of inaccurate particulars on the part of the assessee. Therefore, following the decision of the Co-ordinate Bench of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) and cancel the penalty levied by the Assessing



Officer. The grounds of appeal of the assessee are accordingly allowed.

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

Order pronounced in the open Court on 18/02/2025.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 18/02/2025
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai