

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI PAVAN KUMAR GADALE, JM**

आयकरअपीलसं./ I.T.A. No. 5829/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2009-10)

Sunil B. Vorani, 23 Shirin Mansion, 1 st floor 14, Kosla lane, Pydhonie, Mumbai-400 003	बनाम/ Vs.	ITO-17(3)(4), R. No. 111, 1 st floor, Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAQHS3185J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Karan, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Vijay Kumar Menon, DR
सुनवाईकीतारीख/ Date of Hearing	:	11.03.2021
घोषणाकीतारीख / Date of Pronouncement	:	25.03.2021

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 28 in short referred as 'Ld. CIT(A)', Mumbai, dated 03.07.2019 for Assessment Year (in short AY) 2009-10.

2. The brief facts of the case are, AO levied penalty u/s 271(1)(c) of the Act on account of bogus purchases made by the assessee. On appeal before Ld. CIT(A), Ld. CIT(A) after considering the submission of assessee dismissed the appeal of the assessee with the following observations:-

5.12 Further, I have noted due circumspection the arguments advanced by the Ld. AR. However, I cannot concur with the argument that there is no element of concealment or inaccurate particulars for the simple reason that the appellant has not been able to establish & prove the veracity and the genuineness of the impugned purchases. Moreover, it is for the sake of the balance of convenience that the ITAT has reduced the percentage of the bogus purchase to be adopted as the income. Therefore, the element of inaccurate particulars is conspicuously present. Further, I also note that in the submissions of the A.R., numerous case laws have been quoted. However, on a careful perusal of the same, it is seen that rather than pin-point as to how and in what mode or manner do these precedents, apply to the instant case, the submissions seem to be a rambling exposition on the various aspects of different case laws. It is hardly pointed out as to how they are applicable to the peculiar facts of the appellant's case. Further, it is neither judicially expedient, nor prudent

to superimpose the facts of the case cited by the AR to the facts of the present case. In this sense, each case is undisputedly unique and stands on different pedestal.

5.13 Further, in the matter, it is relevant to note that in the scheme of section 271(1)(c), the infringement that leads to the imposition of the penalty, is a civil liability and no MENS REA need to be proved. This was so held by the Hon'ble Supreme Court in the case Union of India vrs. Dharmendra Textile Processor(2007) 212 CTR (SC) 432.

5.14 One of the principle arguments of the appellant and as aforementioned is that when the addition is on estimated basis no penalty u/s.271(1)(c) can be levied. However, much as this argument would appear attractive on the face of it, the fact of the matter is that the same conveniently glosses over the aspect of the inability of the appellant to adduce at any stage of the proceedings key and important primary documentation to prove in any manner the veracity of the doubtful purchases. Therefore, it cannot be said that the conduct of the appellant is such so as to escape the rigours of the levy of the penalty u/s. 271(1)(c).

5.15 In view of the above discussion, I have no hesitation in upholding the penalty u/s.271(1)(c) to the tune of Rs.8,54,256/-. The same is therefore, confirmed

and the impugned issue is decided against the appellant. The appeal is therefore dismissed.

3. Aggrieved with the above order, assessee is in appeal before us raising the following grounds:-

1. Ld. Assessing officer erred in levying penalty u/s 271(1)(c), wherein the notice issued for levying penalty is in printed form and cyclostyle notice was issued without specifying under which limb the levy of penalty is proposed and Ld. CIT(A) erred in confirming the same.

2. Ld. Assessing officer erred in levying penalty u/s 271(1)(c) amounting to Rs. 8,54,256/- and Ld. CIT(A) erred in confirming the same.

3. The assessee craves, leave to amend, alter or modify of the above grounds of appeal.

4. Before us, Ld. AR appeared on behalf of the assessee submitted that AO levied penalty on account of bogus purchases without proposing in the notice whether it is concealment of income or furnishing of inaccurate particulars of income. He further submitted that merely making an estimation and enhancing the GP does not lead to concealment or furnishing of inaccurate particulars of income and invoking the jurisdiction of

section 271(1)(c) of the Act. In this respect, he relied on various decision of Hon'ble High Courts and Hon'ble Supreme Court and submitted that the levy of penalty imposed by AO and confirmed by Ld. CIT(A) may be deleted.

5. On the other hand, Ld. DR relied on the orders passed by the revenue authorities.

6. Considered the rival submission and material placed on record, we notice from the record that AO levied penalty u/s 271(1)(c) of the Act on estimation basis without any concrete evidence of actual concealment. As per the law, the provisions of section 271 (1) (c) of the Act would be applicable only where the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. However, the estimation of higher rate of profits by the AO cannot be termed as either concealment or furnishing of inaccurate particulars of income.

7. We find support from the series of decisions by different High Courts as well Coordinate Benches of ITAT, wherein it was held that *when addition is made on estimate basis, no penalty is*

sustainable. For the sake of clarity, the following decisions are as under:-

- i) Commissioner of Income-tax v. Norton Electronics Systems (P) Ltd. (2014) 41 Taxmann.com 280 (Allahabad HC).
- ii) Asst. Commissioner of Income-tax v. Vision Research Management (P) Ltd. ITAT Lucknow (2015) 63 Taxmann.com 8 (Lucknow Trib)
- iii) Prem Chand vs. Asst. Commissioner of Income-tax (2014) 52 Taxmann.com 95 (Chandigarh Trib).
- iv) Commissioner of Income-tax v. Brahmaputra Consortium Ltd. (Del).
- v) Commissioner of Income-tax v. P. Roles (Mad),
- vi) Naresh Chand Agarwal v. Commissioner of Income-tax (All).
- vii) Commissioner of Income-tax v. P. H. I. Seeds India Ltd., 120081 301 ITR 0013—(DeI).
- viii) Dilip N. Shroff v. Joint Commissioner of Income-tax, (2007) 291 ITR 519 (SC).

8. After considering the totality of the facts and circumstances and while considering the series of judgments as mentioned above, we are of the view that there is no *active concealment* of income on the part of the assessee and additions made on *estimation* by the AO do not called for initiation of penalty. Thus, in our view, the penalty levied by AO and confirmed by Ld. CIT(A) is hereby deleted. Accordingly, the grounds raised by the assessee are **allowed**.

9. In the net result, the appeal filed by the assessee stands **allowed**.

Orders pronounced in the open court on 25/03/2021.

<i>Sd/-</i> (Pavan Kumar Gadale) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 25/03/2021
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,

Mumbai

6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai