

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 108/Mum/2020
(निर्धारण वर्ष / Assessment Year 2010-11)

The Income Tax Officer Ward 32(1)(4) Room No. 706, 7 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400 051	बनाम/ Vs.	M/s Deora Enterprises 401-402, Narbada Niwas R.C. Patel Road, Chandavarkar Road, Borivali West, Mumbai-400 092
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAFD1878R		

अपीलार्थी की ओर से/ Appellant by	:	Shri Bharat Andhle, CIT DR
प्रत्यर्थी की ओर से/ Respondent by		None

सुनवाई की तारीख / Date of hearing:	20.07.21
घोषणा की तारीख / Date of pronouncement:	13.08.21

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of assessee are arising out of orders of the Commissioner of Income Tax (Appeals)-44, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-44/ITO-32(1)(4)/IT-26/18-19 vide dated 01.10.2019. The Assessment was framed by the Income Tax Officer, Ward-25(1)(4), Mumbai (in short ITO / AO) for the A.Y. 2010-11 vide even date 19.03.2013 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty was by

Income Tax Officer, Ward 32(1)(4), Mumbai for Assessment Year 2010-11 vide even date 08.03.2018 under section 271(1)(c) of the Act.

2. The only common issue in this appeal of Revenue is against the order of CIT(A) deleting the levy of penalty on estimated income in regard to estimation of profit on bogus purchases. For this, Revenue has raised following grounds: -

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961, of ₹ 89,341/- without appreciating the facts that the Assessing Officer has correctly held that the assessee has failed to substantiate the transactions claimed in its return of income thereby evaded taxes to that extent.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the act of assessee clearly falls within the ambit of provisions of Explanation-1 to section 271(1)(c) of the Act as the assessee has failed to offer an explanation or which was found by the Assessing Officer to be false.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the I.T. Act, 1961 of ₹ 89,341/- without appreciating the facts that the assessee claimed bogus purchases in its Return of Income thereby making himself liable for penalty under section 271(1)(c) of the I.T. Act, 1961."

3. Briefly stated facts are that the AO received information from the investigation wing of the department, who in turn received information Maharashtra Sales Tax Department about the entry provider who are engaged in issuing accommodation bills to various beneficiaries but not supplying any material actually. As per the information, the assessee has also obtained bogus bills to the extent **of ₹24,94,614/-** received from M/s Raj Traders & M/s Ramanand Sales Pvt. Ltd. The AO made addition of whole amount as unproved purchase to the return income of the assessee. The CIT(A) restricted the addition by applying profit rate at 11.59% and thereby restricted **the addition of ₹2,89,126/-**. The assessee has not challenged the estimation made by CIT(A) and accepted the addition. The AO initiated the penalty proceedings under section 271(1)(c) of the Act and accordingly, show cause notice was issued to the assessee as to why the penalty under section 271(1)(c) of the Act be not levied for furnishing of inaccurate particulars of income on the profit element of **the bogus purchases i.e. ₹2,89,126/-**. The AO levied the penalty at the rate of 100% for furnishing of inaccurate particulars of income **and levied the penalty amounting to ₹89,341/-**. Aggrieved, assessee preferred the appeal before CIT(A), who deleted the penalty by observing that the quantum addition was based on estimate and once estimate addition was made, penalty cannot be levied. Aggrieved, Revenue came in appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO made addition of **whole amount as unproved purchase at ₹24,94,614/-** to the return income of the assessee but CIT(A) restricted to the profit element by

estimating the profit at 11.59%. He estimated the income at ₹2,89,126/-. It means that the AO has admitted that the assessee alternatively made purchases from the parties but only some profit element is not disclosed. The AO by levying the penalty has nowhere proved purchases are bogus because the assessee has filed explanation that it had made purchases from registered dealers and also produced bills and vouchers along with payment details and the payments are made through account payee cheques. Even, the assessee is able to produce stock tally and also the transactions which are recorded in the book of accounts but could not be verified as the assessee was unable to produce documentary evidences of transportation of goods. We noted that in identical facts Delhi High court has already decided the issue that in the case of estimation of bogus purchases penalty under section 271(1)(c) of the cannot be sustained. We noted that this issue is squarely covered in the case of CIT vs. Nokia India Pvt Ltd [2012] 343 ITR 434 (Delhi), wherein it is held as under: -

"6. It may be noted that in the next assessment year 2001-02, the total amount claimed by the assessee under the head "Provision for obsolescence of inventory" was Rs. 35,575. While the Assessing Officer disallowed the entire amount, the Commissioner of Income-tax (Appeals) reduced the disallowance to 25 per cent. thereof, amounting to Rs. 8,894. The said disallowance

has been affirmed by the Income-tax Appellate Tribunal and the High Court.

7. The Tribunal, while dealing with the question of penalty under section 271(1)(c) on the ground of obsolescence, has held as under (page 801 of 10 ITR (Trib) :

"We have heard both the parties and have carefully gone through the orders of the authorities below.

It is not in dispute that disallowance has been made by the Revenue only to the extent of 25 per cent. of the total claim on account of provision for obsolescences of inventory amounting to Rs 4,94,66,656. In other words, the Assessing Officer has allowed 75 per cent. of the claim and disallowed only 25 per cent. thereof.

The Assessing Officer has disallowed 25 per cent. of the claim on the ground that the old model could easily be sold in the market to the customers since the customers of this line also purchased old model even after launching new model in the market. This makes it clear that the

assessee's claim has not been fully rejected. It is only on estimate that the Assessing Officer has disallowed 25 per cent. of the total claim. The Assessing Officer has not given any such finding that the assessee's claim was otherwise a false claim. The addition made by the Assessing Officer could at best be considered due in difference of opinion between the assessee and the Department but cannot be said to be a claim of such a nature which could be considered to be false and in respect of which the penalty under section 271(1)(c) is to be levied. We, therefore, uphold the order of the learned Commissioner of Income-tax (Appeals) in deleting the penalty on this item also."

8. Looking at the reasoning given by the Income-tax Appellate Tribunal, nature of disallowance and the finding of the Assessing Officer/Commissioner of Income-tax (Appeals) making ad hoc disallowance of 25 per cent., we do not think any substantial question of law arises in the present appeals and the same are accordingly dismissed."

5. As the issue is covered, we find that no infirmity in the order of CIT(A) deleting the penalty. Hence, we confirm the order of CIT(A).

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

Order pronounced in the open court on 13.08.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 13.08.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

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

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

आदेशानुसार / BY ORDER,

त्यापित प्रति //True . व .निजी सचिवyr /rS. aterceS etaviry /
आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai