

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No. 2211/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2010-11)

Jaisingh H. Solanki 25-C Sonarika Apt, Nanubhai Desai Road, Chandawadi, Mumbai- 400004.	बनाम / Vs.	ITO-19(2)(1) Matru Mandir, Tardeo Road, Mumbai-400004.
स्थायी लेखा सं. / जीआइआर सं. / PAN/GIR No. ACAPS6502R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Ujjawal Kumar Chavan (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 26/09/2023

घोषणा की तारीख / Date of Pronouncement: 17/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 24.02.2023 for AY. 2010-11 confirming the action of the AO levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. None appeared for assessee but has filed written submission. At the outset, it is noted that there is delay of 52 days and the assessee has filed a sworn affidavit dated 12.09.2022. After going through the contents of the affidavit, we are of the opinion that there was reasonable cause for belated filing of the appeal. Therefore, we condone the delay and proceed to hear the penalty appeal on its own merit.



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3. Brief facts are that the assessee is an individual, proprietor of M/s. Blue Star International engaged in business of Trading (retailer/wholesaler) of Ferrous and Non-Ferrous Metal. And had filed return of income showing total income of Rs.12,28,236/-. Later, the AO issued notice u/s 148 of the Act and reopened the assessment stating that he has received information from the Sales Tax Department that the assessee was a beneficiary of accommodation entries/bills from the parties named therein to the tune of Rs.2,35,64,090/-. Pursuant to the notices by the AO, the assessee replied that the transaction with six (6) parties named therein was in fact genuine and furnished the relevant documents to substantiate the sale, (i) Copy of purchase bills (ii) Sales bills (iii) Ledger account of the parties in the books of the assessee (iv) Details of payments made to them through cheque (v) Corresponding sales made etc. The AO acknowledged that the assessee filed the aforesaid documents but since the assessee could not file the delivery challans, lorry receipt etc; and since the six (6) parties had admitted before the Sales Tax Department that they were into providing accommodation entries and since assessee couldn't produce the suppliers for verification, the AO estimated the profit earned from bogus purchase of Rs.2,35,64,090/- @ 12.5% which he computed at Rs.29,45,511/-. On appeal, the Ld. CIT(A) confirmed the action of the AO but partly allowed the appeal of the assessee by directing the AO to reduce the profit already declared by assessee on these purchases which brought down the estimated addition to Rs.12,04,124/-.



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4. Thereafter, the AO issued notice u/s 271(1)(c) of the Act on 03.03.2016 and after considering the reply of the assessee levied penalty of Rs.5,27,640/- by order dated 29.03.2018. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC who was pleased to confirm the same. Aggrieved, the assessee is before this Tribunal.

5. Having heard the Ld. DR for the revenue and after perusal of the written submission filed by the assessee dated 22.09.2023, the assessee has assailed the action of the Ld. CIT(A) confirming the penalty of Rs.5,27,640/- on penalty levied by the AO u/s 271(1)(c) of the Act. As noted (supra), the basis of estimated addition in the quantum assessment was based upon information from the Sales Tax Department that the assessee was a beneficiary of accommodation bills to the tune of Rs.2,35,64,090/-. So the AO called upon the assessee to file relevant documents to substantiate the purchase made by the assessee from the six (6) parties named therein. Pursuant to the same, the assessee filed the relevant documents (i) Copy of purchase bills (ii) Sales bills (iii) Ledger account of the parties in the books of the assessee (iv) Details of payments made to them through cheque (v) Corresponding sales made etc. and claimed that the purchase for the parties named therein were genuine but the AO didn't accept the explanation/relevant documents and he estimated the profit embedded in such purchases and estimated the profit @ 12.5% of Rs.2,35,64,090/- which was to the tune of Rs.29,45,511/-. On appeal, the Ld. CIT(A) confirmed the addition but directed AO to reduce the gross profit already shown by assessee. Thus estimated addition got



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reduced to Rs.12,04,124/-. Thereafter, the AO has levied the penalty to the tune of Rs.5,27,640/- u/s 271(1)(c) of the Act for fault of “concealing of income by furnishing inaccurate particulars of income”. And the Ld. CIT(A) has confirmed the action of the AO. And assessee is aggrieved by the action of Ld. CIT(A) confirming the penalty estimated addition made in question assessment.

6. Bearing in mind the fact that the related quantum addition was purely on estimated basis with inherent subjectivity involved, we are of the opinion that no penalty is warranted. For taking such an action, we rely on the following decisions of the Hon’ble High Courts wherein the Hon’ble High Courts have upheld the action of Tribunal deleting penalty levied on estimated quantum addition as under: -

“CIT Vs. Krishi Tyre Retreadign and Rubber Industries (360 ITR 580) (Raj)

CIT Vs. Sangrur Vanaspati Mills Ltd. (303 ITR 53) (P & H)

CIT Vs. Subhash Trading Co. Ltd. (221 ITR 110) (Guj).”

7. Thus, as noted (supra), the issue as to whether the penalty u/s 271(1)(c) of the Act be levied on estimated quantum addition is no longer res-integra, therefore, we are inclined to direct the deletion of the penalty levied to the tune of Rs.5,27,640/-.

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

Order pronounced in the open court on this 17/10/2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 17/10/2023.
Vijay Pal Singh, (Sr. PS)



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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

