

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
&**

**SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.338/Mum/2020  
(Assessment Year : 2010-11 )**

ACIT-26(1) Room No.623, 6 <sup>th</sup> Floor Kautilya Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051	Vs.	Shri Ghanshyam T. Gursahani C-602, Sagar Swapna Nagar Mulund (W) Mumbai – 400 080
<b>PAN / GIR No. AABPG6912E</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Revenue by	Shri T.S. Khalsa
Assessee by	None
<b>Date of Hearing</b>	<b>29/07/2021</b>
<b>Date of Pronouncement</b>	<b>02/08/2021</b>

**आदेश / O R D E R**

**PER SHRI SHAMIM YAHYA AM**

This appeal by the revenue is against order of learned CIT(A)-40, Mumbai dated 23/10/2019 wherein following penalty levied under 271(1)(c) has been deleted :-

<b>Assessment Year</b>	<b>Amount of Penalty</b>
2010-11	Rs.1,30,600/-

2. The brief facts of the case leading to the levy of penalty are that the Assessing Officer in this case made disallowance of 20% on account of bogus purchases. Assessee has supplied the purchase vouchers and

the payment where shown to have been made by banking channel. However, drawing adverse inference for the nonproduction of the suppliers, the Assessing Officer disallowed 20% of the bogus purchases. However, the Assessing Officer did not doubt the sales. Penalty under section 271(1)(c) was also levied. Ld CIT(A) deleted the penalty holding as under:-

**“4. Decision.** *Having gone through the 271(1) (c) order and the submissions made by the Appellant there is merit in the arguments of the appellant for the reason that although the A.O. has estimated 20% gross profit on alleged bogus purchases, never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases and the penalty order is silent on the issue as to how this satisfaction of concealment /furnishing of inaccurate particulars was arrived at. Therefore, the qualification of the alleged concealment/inaccurate particulars is only an estimate and it is settled law that penalty is not attracted on estimated additions without any establishing clear concealment of income or furnishing of inaccurate particulars of income.*

*The Hon'ble Delhi High Court in CIT vs. Aero Traders Pvt. Ltd., reported in 322 ITR 316 (Del), has held that no penalty u/s 271(1)(c) can be imposed whoa income is determined on estimate basis. Similar view has been taken by the Hon'ble Punjab & Haryana High Court in the case of Harigop U Singh vs. CIT reported in 258 ITR 85 (P&H) and the Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Company reported in 221 ITR 110 (Guj). In view of the foregoing precedents including the one from the Hon'ble Jurisdictional High Court, it is apparent that when the bedrock of instant penalty is the estimate of net profit, the same cannot be sustained. Accordingly, the A.O. is directed to delete the penalty levied. The appellants succeeds on his grounds of appeal filed.”*

3. Against this order, revenue is in appeal before us.
4. We have heard Ld DR and perused the records. As clear from the facts recorded above, the disallowance has been made on an estimated basis on account of the nonproduction of suppliers before the Assessing Officer. The purchase vouchers were duly produced and the payments were through banking channel. In these backgrounds, in our considered opinion, assessee cannot be visited with the rigours of penalty under section 271(1)(c). As a matter of fact on many occasions on similar circumstances in quantum proceedings the disallowance itself has been deleted. In our considered opinion, on the facts and circumstances of the

case, assessee cannot be said to have been guilty of concealment or furnishing of inaccurate particulars of income. In this regard, we draw support from the decision of a larger bench of the Hon'ble Supreme Court in the case of the Hindustan Steel Ltd., vs. State of Orissa reported in 82 ITR 26 where in it was held that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious.

5. We further note that tax effect in this case is below the limit fixed by CBDT for filing appeals before ITAT. The revenue has tried to make out a case that since the addition was made pursuant to information from sales tax department, this penalty appeal falls in the exception carved out in the CBDT circular regarding appeals arising out of additions made pursuant to information from outside agencies. We are of the opinion that this plea is not tenable inasmuch as once revenue accepts that penalty is levied on outside agency information /the penalty levied will have no legs to stand. In the background of aforesaid discussion and precedent, we uphold the order's of Ld CIT(A) and delete the levy of penalty.

**6. In the result Revenue's appeal is dismissed.**

Order pronounced on 02/08/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

**Sd/-**  
**(SHAMIM YAHYA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 02/08/2021  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**