

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY S., ACCOUNTANT MEMBER**

**I.T.A 4203 & 4204/Mum/2024
(Assessment Years 2012-13& 2011-12)**

M/s Vijay Jewellers, Kundamal House, 67, Hughes Road, Mumbai-400 007 PAN: AAAFV3730A	vs	Additional / Joint / Deputy / Assistant Commissioner of Income- tax, Income Tax Officer, National Faceless Assessment Centre, Delhi / Present JAO – Dy.Commissioner of Income Tax-19(3), Mumbai Room No.605, Piramal chambers, Lalbaug, Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : Shri Hrithik Yadav / Shri Devang
Divecha
Respondent by : Ms. Rajeshwari Menon SRDR
Date of hearing : 01/10/2024
Date of pronouncement : 03/10/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Both the appeals of the assessee are filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment

Years 2012-13& 2011-12,respectively,date of both the orders24.06.2024.The impugned orders were emanated from the orders of the Learned National Faceless Assessment Centre, Delhi (in brevity the Id. AO), orders passed under section 271(1)(c) of the Act, date of orders 16/03/2022 for A.Y. 2012-13 and 17/03/2022 for A.Y. 2011-12.

2. Both the appeals have common facts and circumstances; therefore, both are heard together and are disposed of by this common order. **ITA No.4204/Mum/2024** is taken as lead case.

ITA No.4204/Mum/2024 (A.Y. 2011-12)

3. The brief facts of the case are that the assessment for A.Y. 2011-12 was completed on 15/12/2016 under section 143(3) read with section 147 of the Act determining the total income at Rs.56,21,190/- in which addition was made of Rs.5,54,989/- being 5% of the bogus purchases of Rs.1,10,99,786/- to the total income of the assessee. Whereas for A.Y. 2012-13, the assessment was completed under section 143(3) read with section 147 of the Act on 27/03/2015 determining total income at Rs.54,86,900/- in which the purchases from Prime Star of Rs.44,46,600/- and Mayur Exports of Rs.29,91,450/- totaling Rs.74,38,050/- was treated as bogus purchases by rejecting the books of account under section 145(3) of the Act and addition was made of R.5,95,044/- being 8% of the alleged bogus purchases of Rs.74,38,050/-. The assessee filed appeals before the Id. CIT(A). But later on, the appeals were withdrawn. The Id.AO, by invoking the provisions of section 271(1)(c) of the Act, initiated the concealment penalty proceedings by issuance of notice under section 274 read with section

271(1)(c) of the Act. The assessee complied with the notices issued under section 274 read with section 271(1)(c) of the Act. Not satisfied with the explanation submitted by the assessee, the Ld.AO levied penalty under section 271(1)(c) of Rs.1,71,492/- for A.Y. 2011-12 and Rs. 1,83,870/- for A.Y. 20-12-13 being minimum penalty leviable @100% of the tax sought to be evaded. Aggrieved by the penalty order, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) upheld the penalty orders. Being aggrieved on the appeal orders, the assessee filed the present appeals before us.

4. We heard the rival submissions and considered the documents available in the record. The assessment was completed with an addition @5% of Rs.1,71,492/- on the alleged bogus purchases and accordingly tax was levied. The assessee withdrew the appeal filed before the Id. CIT(A). Accordingly, the penalty was levied on the basis of estimated addition of alleged bogus purchases.

5. The Id.DR argued and fully relied on the orders of revenue authorities. We find that in our considered view, the entire addition was made on the basis of the estimated addition @5% on the alleged bogus purchases.

We respectfully relied on the order of the co-ordinate bench of **ITAT-Mumbai in Fancy Diamonds India Pvt Ltd vs. DCIT 5(1)(1), Mumbai in ITA Nos961 to 963/Mum/2023**, date of pronouncement **20/06/2023** The relevant part of the order is reproduced as below: -

"6. We heard the rival contentions and perused the record. We noticed earlier that the Assessing Officer has estimated profit on alleged bogus purchases @ 12.5%, which was reduced to 6% by Ld. CIT(A). Admittedly, addition has been made on an estimated basis in all the three years under consideration. The question is whether penalty under Section 271(1)(c) of the Act could be levied on

addition made on estimated basis. This question was examined by the co-ordinate bench in assessee's own case and it was held that penalty under Section 271(1)(c) of the Act is not leviable on addition made on estimated basis. For the sake of convenience, we extract below the operative portion of the order passed by the co-ordinate bench in Assessment Year 2013-14 :-

“9. We have heard the submissions made by rival sides and have examined the orders of the authorities below. Undisputedly, the additions made on account of bogus purchases were partially confirmed by the Tribunal. The assessee failed to discharge its onus in proving genuineness of the purchases and dealers. During assessment proceedings, the addition was made on estimation @ 12.5%. In the first appeal, the addition was restricted to 3% and on further appeal to the Tribunal by the Revenue, the addition was enhanced to 6%. The entire addition right from assessment stage to the Tribunal was merely on estimations. There is no definite finding on the quantum of concealment of income. It is an accepted legal position that penalty under section 271(1)(c) of the Act levied on additions made merely on estimations is unsustainable.

10. The Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tire Retreading and Rubber Industries reported as 360 ITR 580 has held that where addition is made purely on estimate basis, no penalty u/s. 271(1)(c) of the Act is leviable. A similar view has been expressed by Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53. The Hon'ble High Court approving the order of Tribunal held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty u/s. 271(1)(c) of the Act is not leviable. The Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd. reported as 221 ITR 110 has taken a similar view in respect of penalty levied u/s. 271(1)(c) of the Act on estimated additions. There are catena of decisions by different High Courts and various Benches of the Tribunal wherein penalty levied u/s. 271(1)(c) of the Act on estimated addition has been held to be unsustainable.

11. In the result, the impugned order is upheld and the appeal of Revenue is dismissed.”

7. Since the facts of the issue under consideration are identical with the facts of the appeal pertaining to Assessment Year 2013-14 decided by the coordinate bench, following the said decision, we hold that the penalty levied under Section 271(1)(c) of the Act is liable to be cancelled in the instant cases since the additions have been made on estimated basis. Accordingly, we set-aside the orders passed by the Ld. CIT(A) in all the three years under consideration and direct the Assessing Officer to delete the penalty levied under Section 271(1)(c) of the Act in all the three years under consideration.

8. In the result, all the three appeals filed by the assessee are allowed.”

6. Therefore, admittedly the Id. AO made an addition on estimated basis. It has been decided in a number of judgments that when income of assessee was determined on estimation basis, then no penalty under section 271(1)(c) could be imposed for concealment and furnishing inaccurate particulars. The quantification of the addition is admittedly only an estimate. Needless to mention that it is settled principle of law that penalty is not attracted on estimated additions. In that view of the matter, we find no justification imposing penalty for concealment of income or furnishing of inaccurate particulars of income by the assessee. We respectfully relied on the order of the co-ordinate bench in case of **Fancy Diamonds India Pvt Ltd** (supra). We set aside the impugned appeal order and direct to delete the penalty levied U/s 271(1)(c) of the Act amount to Rs. Rs.1,71,492/-.

ITA 4204/Mum/2024 (A.Y. 2012-13)

7. The facts and circumstances in appeal for A.Y. 2012-13 are identical to the appeal for A.Y. 2011-12. Therefore, the decision arrived at above, shall apply mutatis mutandis to this appeal also.

8. In the result, both the appeal filed by the assessee bearing **ITA No.4203 & 4204/Mum/2022** are allowed.

Order pronounced in the open court on 3rd day of October, 2024.

Sd/-

(MISS. PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 03/10/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai