

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3304/MUM/2016  
Assessment Year: 2011-12**

M/s Pramukh Relators  
1301, G Wing Kamla Vihar,  
Borsa Pada, Mahavir  
Nagar, Kandivali (W),  
Mumbai-400067.

Vs.

ACIT-15(2),  
1<sup>st</sup> floor, R. No. 113,  
Matru Mandir,  
Tardeo Road, Grant  
Road (W),  
Mumbai-400007

**PAN No. AAGFP3465N**

**Appellant**

**Respondent**

Assessee by : Mr. Sanjay R. Parikh, AR  
Revenue by : Mr. M.C. Omi Ningshen, DR

Date of Hearing : 21/06/2017  
Date of pronouncement : 18/09/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-45, Mumbai and arises out of the penalty order u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

There has been a delay of 31 days in filing the appeal. The assessee has filed an affidavit for condonation of the above delay. Having gone through the affidavit, we find that there was genuine difficulty on

the part of the assessee to file appeal in time. Considering the above, we condone the above delay.

2. The grounds of appeal filed by the assessee read as under: -

1. The Ld. CIT(A)-45, Mumbai erred on facts and in law in confirming the order passed by the Assistant Commissioner of Income Tax-15(2), Mumbai (AO) levying a penalty of Rs.3,38,388/- u/s 271(1)(c) of the income Tax Act.
2. The appellant prays that the penalty of Rs.3,38,388/- levied by the AO on the appellant u/s 271(1)(c) and confirmed by the CIT(A), may be deleted.

3. In a nutshell the facts of the case are that the assessee-firm had made purchases from parties who were declared as hawala parties by Sales Tax Department, Government of Maharashtra. These parties were in the business of issuing bogus bills and providing accommodation entries. The purchases made by the assessee-firm from the concerned parties are as under:

Name	Amount of Sales to assessee in FY 2010-11 (Rs.)
Krish Corporation	1,53,090/-
Shivraj Traders	1,03,950/-
Atlantic Traders	1,12,425/-
Daksha Enterprises	2,26,249/-
Adinath Trading Co.	1,22,000/-
Rajhans Steel (India)	1,81,042/-
Shree Vallabh Traders	1,96,350/-
<b>Total</b>	<b>10,95,106/-</b>

The Assessing Officer (AO) made an addition of Rs.10,95,106/- as bogus purchase u/s 69C. He also initiated penalty u/s 271(1)(c) in the assessment order dated 20.03.2014. Then the AO issued notice u/s 274 r.w.s 271(1)(c) to the assessee. As the addition of Rs.10,15,164/- was made u/s 69C because of bogus purchase, the AO imposed minimum penalty of Rs.3,38,388/- u/s 271(1)(c) of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) held that (i) the assessee has not challenged before the appellate authority the addition made by the AO of purchases of Rs.10,95,106/- from hawala parties, (ii) this implies that the assessee has accepted the assessment order that hawala purchases were made.

Therefore, the Ld. CIT(A) confirmed the penalty of Rs.3,38,388/- levied by the AO u/s 271(1)(c).

5. Before us, the Ld. counsel of the assessee files a Paper Book (P/B) containing (i) copy of computation of total income, (ii) copy of Balance sheet along with Partners Capital Account and Profit and Loss Account for the year ended 31.03.2011, (iii) Copy of letter dated 06.03.2014 filed with the AO along with Note on purchases made from Dealers and copies of Ledger Accounts and bills on the alleged bogus parties, (iv) Copy of notice u/s 274 dated 20.03.2014, (v) Copy of reply to notice u/s 271 r.w.s 271(1)(c) vide letter dated 11.09.2014, (vi) Copy of submissions filed with the Commissioner of Income Tax (Appeals).

Reliance is placed by him on the order of the ITAT 'E' Bench, Mumbai in the case of *Earth Moving Equipment Service Corporation vs. DCIT* (ITA No. 6617/Mum/2014).

6. *Per contra* the Ld. DR submits that the assessee-firm has not challenged the addition of Rs.10,95,106/- made by the AO u/s 69C before the appellate authority. This implies that the assessee-firm has accepted the assessment order that hawala purchases were made. Thus the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. We give the reasons for our decision below.

In the case of *Earth Moving Equipment Service Corporation (supra)*, the assessee, during quantum proceeding itself filed revised computation of income after disallowing the alleged bogus purchases by citing the reason that the suppliers were not traceable during assessment proceeding. This is not so in the instant case. Therefore, the case of the assessee-firm is distinguishable from the above order relied on by the Ld. counsel.

7.1 In *Union of India vs. Dharamendra Textile Processors* (2008) 306 ITR 277 (SC), the Hon'ble Supreme Court has held that the *Explanations* appended to section 271(1)(c) indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The object behind the enactment of section 271(1)(c) read with the *Explanations* indicates that the section has been enacted to

provide for a remedy for loss of revenue. The penalty under that provision is a civil liability.

The above principle of law has been reiterated in *Mak Data P. Ltd. vs. CIT* (2013) 358 ITR 593 (SC), affirming *CIT vs. Mak Data Ltd.* (2013) 352 ITR 1 (Del).

Coming back to the facts of the case, we find that the assessee-firm has not filed any appeal before the appellate authority against the addition of Rs.10,95,106/- made by the AO on account of bogus purchase. The fact remains that the addition has been made by the AO on account of bogus purchase from hawala parties.

7.2 Examined on the touchstone of the legal principles enunciated by the Hon'ble Supreme Court in the case of *Dharamendra Textile Processors, Mak Data P. Ltd.*, we uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 18/09/2017.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/09/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT

5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

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