

THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 3828/Mum/2018 (Assessment Year 2010-11)
I.T.A. No. 3829/Mum/2018 (Assessment Year 2011-12)

Total Transport Systems Ltd. 701-705, T Square, Opp. Chandivali Petrol Pump Saki Vihar Road, Sakinaka Andheri East Mumbai-400 072. PAN : AA ACT3276C (Appellant)	Vs.	ACIT 11(3)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri C.S. Ananthan & Shri Nitin A. Joshi
Department by	Shri Rajeev Gubgotra
Date of Hearing	19.8.2019
Date of Pronouncement	04.9.2019

ORDER

Per Shamim Yahya (AM) :-

These are appeal by the assessee directed against the orders of learned CIT(A) and pertain to A.Ys. 2010-11 & 2011-12.

The grounds of appeal related to the levy of penalty under section 271(1)(c) of the I.T. Act as under :-

A.Y. 2010-11	Rs. 3,25,000/-
A.Y. 2011-12	Rs. 1,65,000/-

2. Brief facts of the case leading to the levy of penalty are that there were disallowances by the Assessing Officer with regard to the contract receipt accounted for in the accounts as compared to that reflected under 26AS statement. The Assessing Officer made the impugned disallowances by holding that the differences in the contract receipts were not reconciled by the

assessee. Before learned CIT(A) assessee submitted additional evidences. In the A.Y. 2010-11 the learned CIT(A) rejected additional evidences and confirmed the addition. The assessee did not file appeal against the addition confirmed by learned CIT(A). In A.Y. 2011-12 the learned CIT(A) remanded the matter to the Assessing Officer. However, the Assessing Officer rejected the additional evidences on the ground that he is not satisfied by the reconciliation even though he admitted that the sales/contract received attributed to the concerned party was more than that reflected by the statement 26AS. The assessee did not appeal against the addition. On these additions penalty was levied and confirmed.

3. Against this order assessee has filed appeal before us.

4. We have heard both the counsel and perused the records. We find that it is settled law that quantum proceedings and penalty proceedings are separate. Confirmation of addition in the quantum proceedings does not ipso facto means that penalty has to be confirmed. In this case we note that in one of the years assessee has submitted additional evidences which were rejected by learned CIT(A) on the ground that assessee did not submit the same before the Assessing Officer. In another year the A.O. rejected the remanded evidences on the ground that he was not satisfied with the reconciliation even though he did not dispute that the contract receipt accounted for from the disputed party was more than that reflected in the 26AS statement. In these facts in our considered opinion the conduct of the assessee is not contumacious so as to warrant visit by the rigours of penalty u/s. 271(1)(c) of the Act. This view is supported by the decision of the larger bench of Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26). In this case it was expounded that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious. In the present case we find that in one of the years assessee has duly submitted the reconciliation although at the appellate stage which were rejected by learned CIT(A) on the ground that he was not admitting the same as the same were not produced before the

Assessing Officer. In another year Assessing Officer rejected the evidences of reconciliation even though he admitted that the contract receipts from the disputed party accounted for were more than that reflected in the statement 26AS.

5. In the background of the aforesaid discussion and precedent in our considered opinion the conduct of the assessee is not contumacious so as to levy of penalty u/s. 271(1)(c) of the Act.

6. In these circumstances, we set aside the orders of the authorities below and delete the penalty.

7. In the result, appeals by the assessee are allowed.

Order has been pronounced in the Court on 4.9.2019.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/9/2019

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,

(Assistant Registrar)
ITAT, Mumbai

PS