

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH JUDICIAL MEMBER
ITA No. 6542/Mum/2017 (Assessment Year 2009-10)

Mohmed Firdous Khan, Gala No. B/9, Babu Market, Zahoor Nagar, Kherani Road, Sakinaka, Andheri (E), Mumbai 400072. PAN: AIYPK7589A	Vs.	ITO 26(3)(4), BKC, Bandra, Mumbai 400051
---	-----	--

Appellant

Respondent

Appellant by : None

Respondent by : Shri Abi Rama Kartikiyen (DR)

Date of Hearing : 03.09.2019

Date of Pronouncement : 03.09.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-Tax (Appeals)-38, Mumbai, dated 24.08.2017 for Assessment Year 2009-10. The assessee has raised the following ground of appeal:

1. a) The learned Commissioner of Income Tax (Appeal) 38 has erred in confirming the penalty levied u/s 271(1)(c) of The Income Tax Act 1961 by the learned Income Tax Officer of Rs.147500/-
- b) The learned Commissioner of Income Tax (Appeal) 38 failed to appreciate that appellant agreed for addition to income 25% on such purchases to gain peace of mind and to avoid litigation with the Income tax department
- c) The learned Commissioner of Income Tax (Appeal) 38 ought to have appreciated that learned Income tax officer has levied penalty on estimate addition to total income.

2. Brief facts of the case are that assessee filed his return of income for Assessment Year 2009-10 on 22.09.2009 declaring total income of Rs. 6,89,740/-. The assessment was completed under section 143(3) on 27.02.2015. The assessee has shown total purchases of Rs. 16,00,133/- from M/s Shree Vinayak Sales Corporation, Bhandari Metal and Vishal pipes. The said parties were considered as bogus parties on the basis of report of Sales tax department. The Assessing Officer while passing the assessment order made disallowance on account of bogus purchases of Rs. 4,00,023/- being 25% of total alleged bogus purchases of Rs. 16,00,133/-. The assessing officer made additions on estimate basis. The Assessing Officer also initiated penalty under section 271(1)(c). The assessing officer issued show cause notice to the assessee. The assessee filed his reply as noted in para 6 of his penalty order. The assessing officer has not discussed the contents of the reply furnished by the assessee. The reply filed by the assessee was not accepted by assessing officer. The Assessing Officer levied 100% of penalty of tax sought to be evaded vide its order dated 27.02.2015. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Aggrieved, the assessee has filed the present appeal before us.
3. None appeared on behalf of assessee when case was taken up for hearing. Perusal of record reveals that assessee was duly served by the notice of hearing. The Id. AR of the assessee also appeared on one occasion on

20.02.2019. Today, none appeared on behalf of assessee, therefore, we left no option except to hear the submission of ld. DR for the revenue and to decide the appeal on the basis of material available on record. The ld DR for the revenue supported the order of the lower authorities and submits that the assessee has shown bogus purchases, which were disallowed.

4. We have noted that during the assessment, the Assessing Officer made disallowance on account of bogus purchase. The Assessing Officer identified the bogus purchases of Rs. 16,00,133/-. The Assessing Officer disallowed 25% of the purchases. The Assessing Officer made the disallowance on estimated basis. The Assessing Officer levied the penalty @ 100% of the tax sought to be evaded. In our considered view that no penalty is leviable on estimated disallowance. Therefore, the penalty levied by Assessing Officer vide order dated 27.02.2015 is deleted. Hence, grounds of appeal raised by assessee are allowed.
5. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 03 /09/2019.

Sd/-
R.C. SHARMA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 03 .09.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)

4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
TAT, Mumbai**