

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM

**ITA No. 6355/Mum/2018
(Assessment Year: 2009-10)**

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| I.T.O.-21(2)(3) Mumbai. | Vs. | Shri Mohd. Kaleem Majeed Khan, Room No. 3, Chawl No. 3, Municipal Chawl, Umar Rajjab Road, Opp. Rehman Masjid, Morland Road, Mumbai-400011. |
| PAN/GIR No. AACPK 4225 B | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|---------------------------|
| Revenue by | Shri Kumar Padmapani Bora |
| Assessee by | None |
| Date of Hearing | 03/12/2019 |
| Date of Pronouncement | 09/12/2019 |

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-33, Mumbai dated 23/08/2018 for the A.Y. 2009-10 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the revenue is aggrieved for deleting the penalty imposed U/s 271(1)(c) of the Act amounting to Rs.66,916/-.

3. At the time of hearing, no body appeared on behalf of the assessee in spite of giving notice, therefore, the Bench decided to dispose off the appeal after hearing the Id. DR as well as considering the material placed on record.

4. In this case, we found that the penalty has been levied with respect to addition made by the A.O. on account of alleged bogus purchases by computing profit at 15%. By the impugned order, the Id. CIT(A) deleted the penalty after observing as under:

“9. I have carefully considered the above submissions of the appellant and my findings are as under.

9.1 In the instant case, the AO has levied penalty of Rs. 66,916/- on account of an ad-hoc estimated addition at rate of 15% of alleged bogus purchases from four parties. The AO held that the appellant failed to produce the parties meaning thereby did not discharge its onus, hence mens-rea is proved and went on levying penalty. The appellant has submitted that the A.O. has not done any due diligence, nor did he issue any notices u/s 133(6) by calling the purchaser party for cross verification. He has also not followed the due process of law. The Assessing Officer has simply acted on the list provided by the Sales Tax Department containing names of various parties and has issued notice for reopening u/s 148 of the Act. During the assessment proceedings, the appellant ha correctly disclosed factual details of all its incomes and outgoings and the disallowances has been done on that basis. Hence, it is incorrect to hold that the appellant has furnished inaccurate particulars of income based on which the AO levied penalty u/s 271(1)(c) of the Act amounting to Rs.66,916/-.

9.2 On careful perusal of the penalty order and the written submission of the appellant, it is found that addition was made on the basis of income offered by the appellant as undisclosed income on account of bogus purchase and sales. Penalty was levied by the AO on this addition by concluding that income was offered as undisclosed income. But circumstances under which he offered income should not be given as much importance which are required before levy of penalty. It is

claimed that the appellant offered income to buy peace of mind and to avoid lengthy litigations, which is out rightly accepted by the AO. Claim not substantiate with document cannot be lead to inaccurate particulars. Therefore, the same cannot be subjected to initiation of penalty proceedings under the pretext of concealment of income or furnishing of inaccurate particulars u/s 271(1)(c). In my opinion, the addition was made on the particulars offered by the appellant which was not contested did not mean that appellant has agreed for the penalty.

9.3 *In this context, I place reliance on the decision of Hon'ble Madras High Court in the case of CIT Vs Jayaraj Talkies(1999) 239 ITR 914 (Mad HC) wherein it is held that:-*

"The revenue contends that as the assessee-owner of the theatre who had derived income from leasing the same, had after filing a return claiming deduction of a sum of Rs 4125 and Rs 16348 towards building and maintenance furniture repairs respectively, himself volunteered to offer these sums as part of his income on account of the difficulty encountered by him in securing necessary vouchers and receipts. That conduct of the assessee according to the revenue was by itself sufficient to show that there was concealment."

The Hon'ble Supreme Court in the case of Sir Shadilal Sugar and General Mills Ltd v. CIT [1987] 168 ITR 705, has also pointed out that not every case of nondisclosure warrants imposition of penalty as the assessee ay forgo a deduction or offer higher sums for taxation for a hundred and one different reasons and all of them cannot be regarded as reasons which are unworthy."

9.4 *In the present case also appellant offered income because of his inability to establish transaction with supporting documents but does not automatically mean that there is concealment of income. I further rely on following decisions for my view that penalty cannot be levied on addition on agreed basis.*

- * *CIT Vs Suraraj Bhan (2007) 294 ITR 481 (P&H HC)*
- * *CIT Vs Suresh Chandra Mittals (2001) 251 ITR 9 (SC)*
- * *CIT Vs Manjunatha Cotton & Ginning Factory (Key HC)*
- * *Sir Shadi Lal Sugar & General Mills Ltd. Vs CIT (1987) 168 ITR 705 (SC)*

9.5 *On careful perusal of the penalty order, the written submission of the appellant and relied on various case laws, it is found that even the addition was made by the AO on an estimate basis. Considering these facts, the levy of penalty of Rs. 66,916/- u/s 271(1)(c) cannot be justified and needs to be deleted. Hence, grounds raised in the appeal are allowed."*

5. We have gone through the orders of the authorities below and found that the penalty was levied with respect to estimated addition made by the A.O. after estimating profit on alleged bogus purchases. The same was deleted by the Id. CIT(A) after considering various judicial pronouncements and the Id. CIT(A) held that no penalty is leviable in respect of addition made on an estimate basis. In the instant case, the addition has been made by estimating profit at 15% of the alleged bogus purchases, in view of judicial pronouncements relied on by the Id. CIT(A), we do not find any infirmity in the order of the Id. CIT(A) in so far as the penalty has been levied with respect to estimated addition so made.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 09th December, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 09/12/2019
*Ranjan

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai