

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.5807/Mum/2018  
(Assessment Year: 2009-10)**

DSM Infocom Pvt.Ltd. Ground Floor Shailesh Building Link Road, Santacruz (W) Mumbai-400 054	Vs.	DCIT, Circle-4(1)(2) Mumbai
<b>PAN/GIR No.AACCD0460G</b>		
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Smt. Jothilakshmi Nayak, Sr.AR (DR)
Assessee by	None
<b>Date of Hearing</b>	<b>02/12/2019</b>
<b>Date of Pronouncement</b>	<b>02/12/2019</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-2, Mumbai, dated 08/08/2018 and it pertains to Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:-

1. *ON THE Facts and in the circumstances of the case and in law, the Penalty Order u/s 271(1)(c) deserves to be cancelled since the show cause notice u/s 271(1)© of the Act did not specify as to whether the penalty was proposed for concealment of income or furnishing inaccurate particulars of income, which is fundamental requirement for initiating penalty proceedings u/s 271(1)(c) of the Act.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the Penalty Order passed u/s 271(1)(c) of the Act wherein a penalty of Rs. 152,622/- had been levied on (he*

*addition made on account of bogus purchases of Rs. 3,74,191/-, on the basis of information received from the Sales Tax Department and statement of the suppliers before the Sales Tax authorities which were never confronted to the appellant and without allowing the appellant an opportunity of cross examination of the said suppliers.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the Penalty Order u/s 271(1)(c) of the Act without considering the contention of the appellant that making an unsubstantiated claim does not amount to furnishing inaccurate particulars of income and therefore the penalty levied u/s 271(1)(c) is invalid and not as per law.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the Penalty Order u/s 271(1)(c) of the Act without considering the contention of the appellant that penalty u/s 271(1)(c) cannot be levied on an addition which itself had been made on estimate basis, even though the said contention is supported by various judicial pronouncements.*

3. The brief facts of the case are that the assessee has filed its return of income for AY 2009-10 on 29/09/2009, declaring total income of Rs. 2,38,13,640/-. The assessment was completed u/s 143(3) r.w.s 147 of the I.T.Act, 1961 on 22/01/2015, determining the total income of Rs.2,41,87,830/- after making addition of Rs.3,74,191/- on account of unverified purchases. Thereafter, penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 was initiated and called upon the assessee to explain as to why penalty for concealment of particulars of income or furnishing inaccurate particulars of income shall not be levied. In response, the assessee submitted that although, the Ld. AO has made additions towards 12.5% profit on alleged bogus purchases, but, fact remains that the assessee has filed complete details in order to prove genuineness of purchases. Therefore, merely for the reasons that there is an addition towards estimated profit on unverified purchases, the same cannot be considered as furnishing inaccurate particulars of income, which warrants penalty u/s 271(1)(c) of the I.T.Act, 1961. The Ld.AO did not convinced with the arguments of the assessee and hence,

levied penalty of Rs.1,52,622/-, which is 100% of tax ought to be evaded u/s 271(1)© of the I.T.Act, 1961, on the ground that the assessee has furnished inaccurate particulars of income by making a false case of deduction of expenditure.

4. The assessee carried the matter in appeal before the first appellate authority. The Ld.CIT(A), for the detailed reasons recorded in his appellate order and also by following the decision of Hon'ble Bombay High Court in the case of CIT vs. Zoom Communication Pvt.Ltd 327 ITR 510, held that explanation offered by the assessee to substantiate genuineness of purchases from certain parties was unsubstantiated. Moreover, the assessee could not establish that its explanation is bonafide. Hence, the conditions stipulated under the provision of section 271(1)(c) of the Act are fulfilled and accordingly, there is no error in the findings recorded by the Ld. AO, while levying penalty u/s 271(1)(c) of the I.T.Act 1961 and accordingly, confirmed penalty levied by the AO. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. The Ld. AO has levied penalty u/s 271(1)(c) of the I.T.Act, 1961, in respect of additions made towards 12.5% gross profit on alleged bogus purchases, on the ground that the assessee could not establish genuineness of purchases made from certain parties, in the backdrop of clear findings from the Sales Tax Department. It is the claim of the assessee before the Ld. AO that it has furnished necessary evidences in support of purchases from the parties, but the Ld. AO did not accept the explanations of the

assessee, only for the reasons that he had definite information from Sales Tax Department as per which the parties were involved in providing accommodation entries of bogus purchase bills. Except this, the Ld. AO neither pointed out any discrepancies in books of accounts, nor proved that the purchases were in fact non-genuine to make additions towards 12.5% GP on alleged bogus purchases. Therefore, the same cannot be considered as furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the I.T.Act, 1961.

5. Having considered arguments of the Ld.DR and also material available on record, we find that although, the Ld. AO has made addition towards 12.5% profit on alleged bogus purchases, but neither, he has proved furnishing of inaccurate particulars of income, nor explained how the rigors of penalty provisions could be invoked in the given facts of the case. We, further, noted that the assessee has furnished all basic details in support of purchases. The only reason for making additions is non co-operation of the parties in response to 133(6) notices issued by the Ld. AO. Under these facts, it is difficult to accept, the findings of the Ld. AO that the assessee has furnished inaccurate particulars of income, in respect of purchases from those parties. Therefore, we are of the considered view unsubstantiated claim does not amount to furnishing inaccurate particulars of income and therefore, the penalty levied u/s 271(1)(c) is unwarranted. Hence, we direct the Ld. AO to delete the penalty levied u/s 271(1)(c) of the I.T.Act 1961.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 02 /12/2019

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 02/12/2019  
Thirumalesh Sr.PS

**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