

**आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

**आयकर अपील सं./ ITA No. 6881/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2009-10)

The Income Tax Officer Ward 21(2)(3) Room No. 105, 1 <sup>st</sup> Floor Piramal Chambers, Parel, Mumbai-400 012	बनाम/ Vs.	Mewar Ceramics E-II, 3/4, Mukund Nagar, Near Pilla Bunglow, Bandra Link Road, Dharavi, Mumbai- 400 017
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAKFM9693B</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	None

सुनवाई की तारीख / <b>Date of hearing:</b>	<b>17.12.2019</b>
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>17.12.2019</b>

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**

**PER MAHAVIR SINGH, JM:**

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)]-33, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-33/Rg.21/427/2015-16 order



dated 11.09.2018. The Assessment was framed by the Income Tax Officer, ward-21(2)(3), Mumbai (in short ITO / AO) for the A.Y. 2009-10 vide order dated 27.02.2015, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty has been levied under section 271(1)(c) of the Act by ITO, ward 21(2)(3) vide order dated 27.08.2015.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the penalty levied by AO under section 271(1)(c) of the Act on the basis that the addition was made on account of bogus purchases thereby the assessee has furnished inaccurate particulars of income. For this, Revenue has raised the various grounds, which are argumentative in nature.

3. Brief facts are that the AO received information from Sales Tax Authorities that the assessee was engaged in obtaining bogus bills without actually purchases and taking delivery of goods. The assessee made bogus purchases from Laxmi Trading Company amounting to ₹19,17,586/- and AO estimated the profit rate on such bogus purchases at 12.5% and made addition of Rs. 2,39,698/-. This addition was accepted by the assessee and no further appeal was filed. In the meantime, the AO initiated the penalty proceedings and levied the penalty by observing that the assessee claimed bogus purchases amounting to ₹19,17,586/- and accordingly, assessee furnished inaccurate particulars of income and thereby, he levied the penalty under section 271(1)(c) of the Act on the addition amount of ₹2,39,698/-, thereby levied the penalty amounting to ₹79,066/-under section 271(1)(c) of the Act. Aggrieved,



assessee preferred the appeal before CIT(A), who deleted the penalty by observing in para 7.2 and 7.3 as under: -

*"7.2 On careful perusal of penalty order and the written submission of the appellant, it is found that the appellant had submitted various evidences viz., Ledger Accounts of the purchasers, Copies of Invoices, Delivery Challans, Bank Statements duly reflecting the payment effected by Account Payee Cheques etc. during the assessment proceedings. It is observed that the veracity of these documents are neither examined by the AO nor disproved. No detailed enquiry was carried out to establish the said purchase of goods claimed from the suppliers. Hence, it cannot be said that the AO has established that the explanation offered by the appellant was false or the appellant has furnished inaccurate particulars of income. Just because, the appellant was unable to produce the relevant party, it cannot be said that the AO has established concealment of income or filing of inaccurate particulars of income. In my considered opinion. the claim of the*



*appellant may be treated as debatable claim but not entirely a bogus claim. This is clear from the fact that the addition was made on an estimate basis and restricted to only 12.5% of the alleged bogus purchases.*

*7.3 In view of these facts, the levy of penalty of ₹74,066/- under section 271(1)(c) cannot be sustained. Hence, grounds of appeal no 1&3 are allowed."*

Aggrieved, now Revenue is in appeal before Tribunal.

4. I have heard the learned Sr. Departmental Representative. There is none present from the assessee's side. I have gone through the facts and circumstances of the case and noted that the assessee before AO submitted various evidences like ledger account of the purchasers, copies of invoices, delivery challans, bank statements duly reflecting payment made by account payee cheques etc. But these were not disapproved by Assessing Officer. I noted that the CIT(A) exactly on the same finding deleted the penalty that this is merely estimated addition by estimating the bogus purchases and applying the profit rate at 12.5% of the bogus purchase. I noted that this issue is squarely covered in ITA No. 1727/Mum/2018 vide order dated 16.05.2019, wherein it is held as under: -

*"3. Upon careful consideration, upon perusal of assessee's submissions during*



*appellate proceedings, we find that the assessee's plea revolve around the fact that the purchases were made under bona-fide belief and in good faith that the suppliers were genuine. The suppliers used to visit assessee's shop to supply the material as per routine practice. The TIN of the suppliers was found active at the time of purchase of goods. We find the explanation to be plausible one and the overall conduct of the assessee do not inspire us to confirm the penalty. By deleting the same, we allow ground nos. 1 & 2. ...."*

5. As the issue is covered, I find that no infirmity in the order of CIT(A) deleting the penalty. Hence, I confirm deletion of the penalty and confirm the order of CIT(A).

6. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 17.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 17.12.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**