

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
Before Shri Pawan Singh (JM) & Shri S Rifaur Rahman (AM)

ITA No. 5888/Mum/2018(Assessment year : 2009-10)

ACIT-2(3), Room No. 209, 2 nd Floor, Piramal Chambers, Laulbaug, Mumbai-400012	Vs	M/s Vinod Cookware 56, Evergreen Industrial Estate 2 nd Floor, Shakti Mills Lane Dr. E Moses Road, Mahalaxmi Mumbai 400 011 PAN: AACFV2197H
APPELLANT		RESPONDEDNT

Appellant by	Shri Mohammed Rizwan Add. CIT/DR
Respondent by	None
Date of hearing	12-12-2019
Date of pronouncement	12-12-2019

ORDER

PER PAWAN SINGH, JM :

1. This appeal by revenue is directed against the order of learned CIT(A)-33, Mumbai dated 06-07-2018 which arises from penalty levied u/s 271(1)(c) of Income-tax Act for assessment year 2009-10. The revenue has raised the following grounds of appeal:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. *CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 without appreciating the fact that the assessee had accepted the order passed by the Ld. AO u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 dated 19.03.2014 and had not preferred first appeal against the said order wherein substantive addition made on account of bogus purchases was made and penalty u/s. 271(1)(c) was levied."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 ignoring the fact that the assessee had failed to produce the parties

from which the alleged bogus purchases were made, before the Ld. AO during the course of assessment proceedings u/s. 147 of the Act after giving several opportunities given to the assessee to substantiate its claim."

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 ignoring the fact that the assessee's case was reopened on information received from the Sales Tax Authorities that the assessee had taken bogus bills from certain parties without actually purchasing and taking delivery of goods."

4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 disregarding the ratio of judgment laid down in the case of CIT vs. Mohd. Mohtran Farooqui, 259 ITR 132 and K.P. Madhusudhan, 251 ITR 33, relied upon by the Ld. AO."

2. Brief facts of the case are that while passing the assessment order 143(3) r.w.s. 147 on 28.02.2011 for assessment year under consideration, the assessing officer (AO) made addition of Rs.33,261/- being 25% of the purchases shown from M/s Girnar Sales Corporation and Vaishali Enterprises and added to the total income of assessee. The disallowance was made on the ground that the assessee has shown purchases from the dealers whose names are listed in the list of hawala dealers. The AO initiated penalty on such adhoc disallowances. The notice under section 271(1)(c) was issued and served on the assessee. The assessee filed its reply vide reply dated 14.08.2014. In the reply besides the other contentions the assessee stated that no penalty is leviable on the adhoc additions of the purchases. The reply of the assessee was not accepted by

the AO. The AO accordingly levied penalty @100% of tax sought to be evade vide order dated 30-09-2014. On appeal before the Ld. CIT(A), the penalty was deleted on the ground that the penalty was levied on estimated addition. Thus aggrieved by the order of Ld.CIT(A), revenue has filed the present appeal.

3. None appeared on behalf of the assessee despite service of notice through registered post with acknowledge due (RPAD). Therefore, we decided to hear the submissions of learned departmental representative (DR) and to decide the appeal on the basis of material available on record. We have heard the submissions of the Ld. DR for revenue and perused the material available on record. The Ld. DR relied upon the order of AO. The Ld. DR submits that addition was made by AO on account of bogus purchases and accordingly the penalty was levied to the extent of 100% of tax sought to be evaded.
4. We have considered the submissions of Ld. DR and perused the material available on record. We have noted that in the re-assessment order passed u/s 143(3) r.w.s. 147, the AO made estimated addition on account of alleged bogus purchases shown from two hawala parties. The AO made addition on estimate basis. The penalty was levied by AO on estimated addition. Before Ld CIT(A) the assessee urged that though the purchases are genuine, which is evident from the fact that the additions

are based on estimation only. The estimation is based on the particulars furnished by the assessee. All facts were correctly disclosed by the assessee. After considering the submission of the assessee, the Id CIT(A) concluded the documents of the assessee was neither examined by AO nor disproved. The Ld. CIT(A) deleted the penalty by considering the fact that no penalty order was sustainable on estimated addition. Accordingly, we do not find any infirmity in the order of Ld. CIT(A). We uphold the same.

5. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12-12-2019.

Sd/-

Sd/-

(S Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 12th December, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai