

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "H", MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VP) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5395/MUM/2018  
Assessment Year: 2009-10**

The Income Tax Officer, 6(3)(4), R. No. 524, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	<b>Vs.</b>	M/s Kheraj Electricals Industries Pvt. Ltd., 11bc, Old Anjirwadi, Dr. Mascrenhas Road, Mumbai - 400010 PAN: AABCK1412E
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Pankaj Kumar (DR)  
Assessee by : Shri Marlon Rego (AR )

Date of Hearing: 03/12/2019  
Date of Pronouncement: 31/12/2019

**ORDER**

**PER RAM LAL NEGI, JM**

The revenue has preferred the present appeal against the order dated 12.06.2018 passed by the Commissioner of Income Tax (Appeals)-12 (for short the CIT(A), Mumbai, pertaining to the assessment year 2009-10, whereby the Ld. CIT(A) has allowed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act') and deleted the penalty levied by the AO.

2. The Brief facts of the case are that the assessee company engaged in the business of manufacturing and trading of industrial electrical goods, filed its return of income for the assessment year under consideration declaring total income at Rs. 14,46,364/-. The return was processed u/s 143 (1) of the Act. The case was re-opened u/s 147 of the Act on the basis of information received from DGIT (Investigation), Mumbai to the effect that the appellant company had obtained accommodation entries from hawala operator M/s Arihant

Enterprises amounting to Rs. 8,16,671/- during year relevant to the assessment year 2009-10. After hearing the assessee, the AO determined the total income of the assessee at Rs. 16,09,700/- after making an addition of 20% of the total amount of bogus purchases amounting to Rs. 1,63,334/-. Accordingly, AO initiated proceedings u/s 271 (1) (c) of the Act for furnishing inaccurate particulars of income and levied penalty of Rs. 50,470/-. In the first appeal, the Ld. CIT (A) deleted the penalty levied by the AO. The revenue is in appeal against the said order passed by the Ld. CIT (A).

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

*“1. On the facts and circumstances of the case and in law, the learned AO has erred in deleting the penalty levied by the AO u/s 271 (1) (c) amounting to Rs. 50,470/- levied on account of Bogus purchases without appreciating that the assessee could not bring any evidence on record to substantiate that the purchases are genuine.*

*2. On the facts and circumstances of the case and in law, the learned AO has erred in deleting the penalty ignoring that the information on account of bogus purchases is received from the external agency that the assessee had received accommodation entry.*

*3. The tax effect in this is Rs. 50,470/-, however this appeal has been filed because it is covered by exception in para 10(e) of the CBDT Circular No. 3/2018 dt. 11-7-2018.”*

4. Before us, the Ld. DR submitted that in present case the assessee obtained bogus purchase bills from hawala dealer, who used to issue bogus bills/entries in order to inflate the purchases on commission basis. The assessee during the year relevant to the assessment year under consideration obtained bogus bills amounting to Rs. 8,16,671/- from M/s Arihant Enterprises. The AO made addition of 20% of the total amount of bogus purchases to the income of the assessee on estimation basis. Accordingly, penalty proceedings u/s 271 (1) (c) of the Act was initiated and penalty of Rs.

50,470/- was imposed for furnishing inaccurate particulars of income by the assessee. In the light of the aforesaid facts, the Ld. DR submitted that since the AO has initiated penalties on the basis of the additions made during the reassessment proceedings, the Ld. CIT (A) ought to have confirmed the penalty levied by the AO.

5. On the other hand, the Ld. counsel for the assessee relying on the order passed by the Ld. CIT (A) submitted that since the Ld. CIT (A) has passed the present order in accordance with the decision of the Mumbai Benches of the ITAT, there is no infirmity in the order passed by the Ld. CIT (A) to interfere with. Accordingly, the Ld. counsel submitted that the appeal of the revenue may be dismissed.

6. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the authorities below. The only grievance of the revenue is that the Ld. CIT (A) has wrongly deleted the penalty levied by the AO u/s 271 (1) (c) of the Act. As pointed out by the Ld. counsel, the Ld. CIT (A) has deleted the penalty by relying on the decision of the coordinate Bench in the case of *Earthmoving Equipment Service Corporation vs. ITO* (ITA No. 6617/Mum/2014). The findings of the Ld. CIT (A) are as under:-

*“14. Under the facts and circumstances of the appellant’s case as mentioned above, it cannot be considered that the appellant has furnished inaccurate particulars of income within the meaning of section 271 (1) (c) of the Act. It is seen that in the case of Earthmoving Equipment Service Corporation Vs. ITO (supra), the Hon’ble ITAT, Mumbai deleted the penalty levied in respect of bogus purchases under similar facts and circumstances. The relevant part of the decision of the Hon’ble Tribunal is reproduced as under:-*

*7. On merits, Ld. AR has assailed imposition of penalty on various grounds and placed reliance on various judicial pronouncements which we have duly considered. We find that*

*first of all Section 69C could not be applied to the facts of the case as the payments were through banking channels which were duly reflected in the books of account and therefore, there was no unexplained expenditure within the meaning of Section 69C incurred by the assessee. Further, we find that the assessee was in possession of purchase invoices and various other documentary evidences qua these purchases. A bare perusal of the purchase invoices reveals that the assessee has purchased consumables etc. from the alleged bogus suppliers, which are connected, at least to some extent, with the business of the assessee. The assessee, during quantum proceedings itself filed revised computation of income after disallowing the alleged bogus purchases by citing the reason that the suppliers were not traceable during assessment proceedings. Nevertheless, the assessee was in possession of vital evidences in his possession to prima facie substantiate his purchases to some extent particularly when the payments were through banking channels. Merely because the suppliers could not be traced at the given address would not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the assessee. The assessee made a claim which was bona fide and the same coupled with documentary evidences but the same remained inconclusive for want of confirmation from the suppliers. Therefore, overall facts of the case do not justify imposition of penalty on the assessee and therefore, the same deserves to be deleted on merits of the case. All the cited case law support the view taken by us in the matter. Therefore, by deleting the impugned penalties, we allow assessee's appeal."*

7. Under section 271(1)(c) of the Act, AO has power to impose penalty on an assessee for concealing its particulars of income or furnishing inaccurate

particulars of such income. As per the settled law, proceeding for imposition of penalty and assessment are two separate and distinct proceedings and the findings recorded by the authorities below or the appellate authorities including the ITAT in quantum appeal cannot be said to be the conclusive factor in the penalty proceeding. In other words, addition of certain amount in quantum appeal does not *ipso facto* make an assessee liable for penalty u/s 271(1)(c) of the Act. Admittedly, in the present case, the AO has made addition on estimation basis for the reason that the assessee has failed to prove the genuineness of transaction by adducing cogent and convincing evidence. Since, the addition is on *ad-hoc* basis, it cannot be concluded that the assessee has furnished inaccurate particulars of such income within the meaning of section 271 (1) (c) of the Act. The coordinate Bench of the Tribunal in the case of *Shri Ajay Loknath Lohia ITA No. 2998/Mum/2017* for the AY 2009-10, has held that disallowance of purchases on *ad-hoc* basis does not tantamount to willful furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the Act.

8. Similarly, in the case of *M/s SMC Indu (JV) vs. ACIT ITA No. 4454/Mum/2016 AY 2009-10* the coordinate Bench of the Tribunal has held that penalty cannot be levied where the assessment is made on estimation basis. Since, the facts of the present case are similar to the facts of the cases discussed above and the issues involved are identical, we respectfully following the decisions of the coordinate Benches discussed above, uphold the order of the Ld. CIT (A) and dismissed the revenue's appeal.

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 31<sup>st</sup> December, 2019.

Sd/-  
(PRAMOD KUMAR)  
VICE PRESIDENT

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/12/2019

Alindra, PS

**आदेश 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 (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai