

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

I.T.A. Nos. 6295/Mum/2018
Assessment Years : 2009-10

ITO 19(3)(1) 2 nd Floor, Rm No. 202 Matru Mandir, Tardeo Road, Mumbai – 400 007	बनाम/ Vs.	Shri Rameshchandra Hansraj Mehta 6 th Floor, A-13 Arvind Kunj, Tardeo Road, Mumbai – 400 034
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHPM4570A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Smt. Jothilakshmi Nayak
प्रत्यर्थी की ओर से/ Respondent by :	None

सुनवाई की तारीख / Date of Hearing	09.01.2020
घोषणा की तारीख/ Date of Pronouncement	22.01.2020

आदेश / ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the Revenue against order dated 29.08.2018 of learned Commissioner of Income Tax (Appeals) – 28, Mumbai, deleting the penalty imposed of Rs. 1,50,160/- u/s 271(1)(c) of the Income Tax Act, 1961, for the Assessment Year 2009-10.

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2. Briefly the facts are, the assessee is an individual and carries on business of trading in ferrous and non-ferrous metals. For the assessment year under dispute assessee filed his return of income on 25.09.2009, declaring income of Rs. 2,97,480/-. Initially, the return of income filed by the assessee was processed u/s 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Govt. of Maharashtra, through the O/o the Director General of Income Tax (DGIT)-(Investigation), Mumbai, that the assessee is a beneficiary of accommodation bills provided by certain entities identified as hawala operators, the Assessing Officer reopened the assessment u/s 147 of the Income Tax Act, 1961. During the assessment proceeding the Assessing Officer called upon the assessee to prove the genuineness of purchases worth of Rs. 30,83,889/- claimed to have been made during the year from three parties. Though, in response to the query raised by the Assessing Officer the assessee furnished some documentary evidences, however, the Assessing Officer was not satisfied with them.

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Ultimately the Assessing Officer held the purchases to be non-genuine on the reasoning that the assessee could not prove the actual delivery of goods through proper evidence and further the notices issued u/s 133(6) of the Income Tax Act, 1961 to the selling dealers returned back un-served. However, after rejecting the books of accounts the Assessing Officer did not add the entire purchases to the income of the assessee, but, being of the view that the assessee has availed accommodation bills to suppress the true profits, proceeded to estimate the profit element embedded in such purchases at 25% and accordingly, made addition of Rs. 7,70,972/-. Contesting the aforesaid addition, assessee preferred appeal before learned Commissioner (Appeals).

3. After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) restricted the addition to 12.5% of the non-genuine purchases. Though, against the aforesaid order of learned Commissioner (Appeals) assessee went in further

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appeal before the Tribunal, however the order of learned Commissioner (Appeals) was confirmed.

4. Be that as it may, on the basis of addition sustained by the Tribunal, the Assessing Officer initiated proceeding for imposition of penalty u/s 271(1)(c) of the Income Tax Act, 1961 and ultimately passed an order on 29.12.2017 imposing penalty of Rs. 1,19,115/- u/s 271(1)(c) of the Income Tax Act. The assessee challenged the penalty order so passed before learned Commissioner (Appeals). After considering the submissions of the assessee learned Commissioner (Appeals) deleted the penalty imposed.

5. When the appeal was called for hearing no one was present on behalf of the assessee to represent the case. Even, there is no application by the assessee seeking adjournment. In view of the aforesaid, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

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6. We have considered the submissions of the learned Departmental Representative and perused material on record. It is evident, though, the Assessing Officer has treated the purchases of Rs. 30,83,889/- as non-genuine, however, he has ultimately concluded that by availing accommodating bills representing such purchases what the assessee has done is to suppress its profit. Therefore, the dispute / doubt is only with regard to the source of purchase. The fact that goods were purchased and have entered assessee's stock has been accepted which is clear from the fact that the Assessing Officer has ultimately added profit element by estimating it at 25% of the alleged non-genuine purchase. In appeal proceedings, such profit rate has been reduced to 12.5%. Thus, as could be seen, ultimately the addition is on the basis of estimation of profit element. The inability on the part of the assessee to conclusively prove the source of purchases could be for various factors. However, that by itself would not lead to the conclusion that the assessee has furnished inaccurate particulars of income or concealed his

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income. More so, when there is no dispute that the assessee has effected the disputed purchases, though, may be from unknown sources. That being the case, the assessee cannot be accused of committing any offence u/s 271(1)(c) of the Act. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the penalty imposed. Grounds raised are dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

This Order is pronounced in Open Court on 22.01.2020

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai, Dated 22.01.2020

KRK, PS