

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 345/Mum/2019
(Assessment Year: 2010-11)**

I.T.O., Ward 3(2), Thane, Room No. 14, 6 th Floor, B-Wing, Wagle Industrial Estate, Thane (W), 400604.	Vs.	M/s Prayosha Buildmat Pvt. Ltd., 8, Vivek Co-operative Housing Society, Ravi Compound, Madan Lal Dhingra Road, Mr. Talwalkar Gym Panchpakadi, Thane (W)- 400602.
PAN/GIR No.AABCP 0114 A		
(Appellant)	..	(Respondent)

Revenue by	Shri Akhtar H Ansari (DR)
Assessee by	None
Date of Hearing	22/01/2020
Date of Pronouncement	22/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-2, Thane dated 14/11/2018 for the A.Y. 2010-11 in the matter of deletion of penalty imposed U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) amounting to Rs.1,49,051/-.

2. I have gone through the orders of the authorities below and found that the A.O. has levied penalty in respect of addition made on account of bogus purchases by estimating profit thereon. By the

impugned order, the Id. CIT(A) has deleted the penalty after observing as under:

"5. *I have carefully considered the facts of the case, findings of the AO, submission of the AR and material placed on record. It is observed that there is a normal tendency to subject an assessee to penalty u/s 271(1)(c) in all cases where the assessee refrains to file an appeal pursuant to an assessment order, with a hope to end the nightmare which began with selection of case for scrutiny by accepting the general additions in assessment order. Penalty is straightaway levied merely because no appeal has been filed against the quantum order. The Hon'ble Supreme Court in the case of **Sir Shadilal Sugar Mills (168 ITR 7051)** held that there may be a hundred and one reasons for not protesting and agreeing to an addition but that does not follow to the conclusion that the amount agreed to be added was concealed income. The Hon'ble Karnataka High Court in case of **CIT V. Manjunatha Cotton & Ginning Factory (2013 35 taxmann.com 250)** categorically held that:-*

"...The very fact that the assessee agreed to pay tax and did not challenge the assessment order, cannot be construed as mala fide."

6. *Following judicial pronouncements can also be relied on in support of the proposition that voluntary surrender of income does not attract penalty u/s 271(1)(c) of the Act:-*

- * CIT vs Jayaraj Talkies (1999) 239 ITR 914 (Mad HC):- Mere agreement to addition of income or surrender of income did not comply concealment of income.*
- * CIT v/s M George & Brothers (1987) 59 CTR (Kerala HC) 298:- Where the assessee for one reason or other agrees or surrenders certain amounts for assessment,*

the imposition of penalty solely on the basis of assessee's surrender will not be well founded.

** CIT V/S Surajbhan (2007) 294 ITR 481 (P&H HC):- Penalty cannot be imposed merely on account of higher income having been subsequently declared.*

7. *The Supreme Court has recently reiterated the law in case of **Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519** by holding in para 62 that finding in assessment proceedings cannot automatically adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle.*

8. *In the case of **CIT v. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC)** it was held as under:*

"We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature".

9. *The levy of penalty is merely on disallowance of purchases and not finding of concealment of any particular or mala-fide intention to reduce taxable income. Addition made on account of disallowance of purchases as bogus automatically cannot justify the penalty levied u/s 271(1)(c) of the Act. Accordingly, the penalty of Rs. 1,49,051/- imposed U/s 271(1)(c) of the I.T. Act by the A.O., is hereby deleted and the grounds of appeal, raised as above, are allowed."*

3. Against the above order of the Id. CIT(A), the revenue is in further appeal before the ITAT.

4. I have considered the contentions of the Id DR and found that the addition has been made by the A.O. by alleging that the assessee has obtained bogus bill of Rs. 4,82,367/-. As the addition was very meager, the assessee did not file the appeal and paid the tax. However, the A.O. also levied penalty U/s 271(1)(c) of the Act which was deleted by the Id. CIT(A) after considering various judicial pronouncements in terms of finding given at para 5 to 9 of its appellate order. Nothing was brought to our notice by the Id Dr to controvert the finding so recorded by the Id. CIT(A). Accordingly, I do not find any reason to interfere in the order of the Id. CIT(A) for deleting the penalty imposed by disallowing purchases without finding any concealment of any particulars or malafide intention to reduce taxable income.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 22nd January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 22/01/2020
*Ranjan

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