

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 324/MUM/2019
Assessment Year: 2011-12**

Income Tax Officer – 3(3)
Room No. 8, 6th Floor, B-Wing
Ashar IT Park Road No. 16Z,
Wagle Estate, Thane West,
Thane – 400604.

M/s. S.D. Process Equipment
Plot No. 1,2,3 & 4, Scientific
Complex, Opp. Thakur Pada
near Shil Octroi Naka,
Mumbra, Thane – 400612.

PAN No. AATFS 4002 M

Appellant

Respondent

Revenue by : Mr. R. Bhoopathi, DR
Assessee by : None

Date of Hearing : 21/01/2020
Date of pronouncement : 28/01/2020

ORDER

PER N.K. PRADHAN, A.M.

The appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-2 [in short 'CIT(A)], Mumbai and arises out of the penalty order passed by the Assessing Officer (AO) u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 21.01.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above date. In view of the non-compliance by the assessee, we are proceeding to dispose off this appeal

after perusing the materials available on record and hearing the Departmental Representative (DR).

2. The grounds of appeal read as under:

1. On facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact that the assessee failed to prove the genuineness of the alleged bogus purchases from the Hawala parties during the course of assessment as well as penalty proceedings.
2. On facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact that the assessee could not produce the alleged bogus parties for verification of genuineness of transaction during assessment proceedings as well as penalty proceedings.
3. On facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact that there was clear intention on the part of the assessee to reduce the taxable income by claiming purchases from non-genuine parties.
4. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the A.Y. 2011-12 on 27.09.2011 declaring total income of Rs. 57,057/-. On the basis of information received from the Sales Tax Department, Govt. of Maharashtra and further findings, the AO observed that the assessee had obtained bogus purchase bills of Rs. 19,96,355/- from 7 entry providers. In the assessment order dated 24.03.2015, the AO estimated the profit @ 12.5% on such disputed purchases of Rs. 19,01,290/- (after deducting input

VAT of Rs. 95,064/- which was not debited to P&L A/c). Thus the AO made a disallowance of Rs. 2,37,661/-.

Thereafter, the AO levied a minimum penalty of Rs.73,440/- u/s 271(1)(c) on the disallowance of Rs.2,37,661/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 27.11.2018, the Ld. CIT(A), by following the decision in *Sir Shadilal Sugar Mills* (168 ITR 7051)(SC), *CIT v. Manjunatha Cotton & Ginning Factory* (2013 35 taxamnn.com 250) (Karn.), *Dilip N. Shroff v. Jt. CIT* (2007) 291 ITR 519 (SC), *CIT v. Reliance Petro Products (P) Ltd.* (2010) 322 ITR 158 (SC), deleted the penalty of Rs.73,440/- on the ground that “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.

5. Before us, the Ld. DR submits that the estimation @ 12.5% has been made by the AO not on normal purchases, but on bogus purchases and therefore, the penalty of Rs.73,440/- be affirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the AO has not levied the penalty on the disputed purchases. Rather, he has estimated the profit embedded in such purchases at 12.5%. In such a scenario, we are of the considered view that the Ld. CIT(A) has rightly followed the decisions referred at para 4 hereinabove and deleted the penalty.

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

Order pronounced in the open Court on 28/01/2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/01/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai