



ITA No.200/Mum/2019
R.M. Mehta & Co.
Assessment Year :2009-10

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No 200/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. R.M. Mehta & Co. New Trombay Road Opp. Godrej Foods Ltd. Opp. Castrol Depot, Wadala(W), Mumbai – 400037.	बनाम/ Vs.	ACIT-2 Piramal Chambers Lalbaugh Mumbai – 400013.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAAFR-1399-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ashok Mehta- Ld. AR
Revenue by	:	Ms. Jothilakshmi Nayak-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	28/01/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-48, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-48/IT-380/ACIT-21(3)/2018-19 dated 13/11/2018* on following grounds of appeal: -

1. The Learned Assessing Officer erred in levying penalty of Rs. 4,77,244/- under section 271(1)(c) & CIT Appeal – 48 erred in confirming the same.



2. The Learned Assessing Officer and CIT Appeal – 48 erred in confirming penalty without appreciating that the addition is made on account of estimation and probability without any evidence against the assessee.
3. The Learned Assessing Officer erred in levying penalty without considering the fact that the assessee had provided all the evidences including truck nos in which the delivery was made to the assessee and further sold the goods & the CIT Appeal – 48 erred in confirming the same.
4. The assessee craves leave to add/alter/amend/delete any of the above grounds of appeal.

As evident from ground of appeal, the assessee is aggrieved by confirmation of penalty u/s 271(1)(c) for Rs.4.77 Lacs.

2. The Ld. Authorized Representative for Assessee (AR) submitted that penalty has been levied on estimated additions on account of *alleged bogus purchases*. The Ld. AR submitted that additions made merely on estimated basis would not justify penalty u/s 271(1)(c). *Au Contraire*, Ld. DR pointed out that the assessee miserably failed to substantiate the purchase transactions and therefore, the levy of penalty was justified.

3.1 Facts on record would reveal that the assessee was assessed for year under consideration u/s 143(3) r.w.s. 147 on 30/03/2014. The reassessment proceedings were triggered pursuant to receipt of certain information from Sales Tax Department that the assessee obtained fictitious purchases bills for Rs.123.55 Lacs from an entity namely *M/s Raj Traders*. Although the assessee produced copies of challans and bills of supplier along with evidence of payment through banking channels but failed to produce the supplier for verification of purchases. Consequently, Ld. AO made estimated additions of 25% against such purchases and initiated penalty proceedings for furnishing of inaccurate



particulars of income. Upon further appeal, Ld. CIT(A) reduced the estimation to 12.5% vide appellate order dated 18/03/2016.

3.2 During penalty proceedings before Ld. AO, the assessee submitted that additions were made without any documentary evidences. No fault was found in various details furnished by the assessee in support of purchase transactions. These details included purchase bills, truck nos., corresponding sales made out of purchases, ledger extracts, reconciliation of purchase and sales and evidences of payment through banking channels. Hence, there was no justification of levy of penalty. However, not convinced, Ld. AO levied a penalty of Rs.4.77 Lacs u/s 271(1)(c). The Ld. CIT(A) confirmed the same by applying explanation-1 to Sec. 271(1)(c). Aggrieved, the assessee is under further appeal before us.

4. Upon careful consideration of factual matrix as enumerated by us in preceding paragraphs, it is observed that the quantum additions have been made primarily because the assessee could not produce the supplier to prove the genuineness of the transactions. Nevertheless, the assessee was in possession of primary purchase documents. The assessee furnished purchase bills, truck nos., corresponding sales made out of purchases, ledger extracts, reconciliation of purchase and sales and evidences of payment through banking channels to establish the genuineness of the purchases. There could be multiple reason for non-production of a third party. It is also settled legal position that levy of penalty is not automatic and merely because the quantum additions were accepted, the same could not automatically lead to imposition of penalty unless the assessee had no bona-fide explanation. The given



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factual matrix does not convince us to confirm the penalty since the assessee had furnished sufficient documentary evidences in support of purchase transactions, as called for by Ld.AO. Therefore, by deleting the impugned penalty, we allow the appeal.

5. Resultantly, the appeal stands allowed in terms of our above order.

Order pronounced in the open court on 05th February, 2020.

Sd/-	Sd/-
(Mahavir Singh)	(Manoj Kumar Aggarwal)
उपाध्यक्ष / Vice President	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05/02/2020

Sr.PS. Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.