

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai**

Before Shri R.C. Sharma, Accountant Member

ITA No. 602/Mum/2019
(Assessment Year: 2009-10)

A C I T – 31(1)
C-11, Pratyakshakar Bhavan
Bandra Kurla Complex
Bandra (E)
Mumbai 400051

Shri Abdul Anwar Haji Abdul Gani
9 Shop No. 5, Ashok Raj Buldg.
Vs. S.V. Road, Goregaon (W)
Mumbai 400062

PAN – AADPG6168J

Appellant

Respondent

Appellant by: Shri Anoop Hiwase
Respondent by: None

Date of Hearing: 29.01.2020
Date of Pronouncement: 05.02.2020

ORDER

Per R.C. Sharma, AM

This is an appeal filed by the Revenue against the order of the CIT(A)-42, Mumbai for A.Y. 2009-10, in the matter of deletion of penalty, which was imposed by the AO under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

2. I have gone through the orders of the authorities below and found that the assessee is engaged in trading of furniture. The AO got information regarding assessee taking accommodation bills of purchases. The AO reopened the assessment and thereafter added the entire bogus purchases in assessee's income, which was confirmed by the CIT(A). However, the Tribunal restricted the addition to the extent of 12.5% of the bogus purchases. The AO also levied penalty under Section 271(1)(c) of the Act with respect to the addition upheld on account of bogus purchase. By the impugned order the CIT(A) deleted the penalty by observing that the addition has been made purely on estimate basis and after considering the judicial pronouncement in the case of Deepak Gogri vs. ITO in ITA No.

1396/Mum/2017 dated 23rd November, 2017. The precise observation of the CIT(A) is as under: -

“8.5 In the present case, the assessment is based on the information received from DGIT(Inv.), Mumbai that the appellant has made bogus purchases / taken accommodation entries from certain hawala operators who have indulged in issuing bogus sale/purchase bills without actual delivery of goods. The appellant had submitted various evidences in the form of purchase bill, bank statement highlighting payments made for purchase and details of materials and its utilisation in the manufacturing process and details of finished goods and that the AO has accepted the sales figure, however, the AO took the view that the assessee failed to establish the genuineness of the transactions carried out with the said alleged party / parties, which was confirmed by the CIT (A) also finding that the goods declared purchased from the bogus hawala dealers have not been consumed or utilized by the appellant in its business. However, the Hon'ble ITAT Mumbai has found that the appellant in the letter dated 22/01/2014 addressed to the AO has produced the bills of purchases details, payment of these purchases vide by account payee cheques, details of materials and its utilisation in the manufacturing process and details of finished goods and finding that the AO has accepted the sales figure and there is no evidence the purchase consideration has been received back by the assessee restricted the addition on estimated basis @ 12.5% of the alleged purchases finding. Thus, apart from the fact that the Assessing Officer disbelieved the appellant's explanation for the reason the parties who have given purchase invoices to the appellant were not traceable at the addresses given in the invoices, there is no other material to show that the particulars disclosed by the appellant are not truthful The appellant was in possession of vital evidence to prima facie substantiate his purchases to some extent. Merely because the suppliers could not be traced at the given addresses could not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the appellant. The appellant has offered an explanation, which could not be termed as not bona fide and the same was coupled with documentary evidence however the same remained inconclusive for want of confirmation from suppliers Thus, in this case it can be concluded from the above discussion that the appellant has offered an explanation, which could not be termed as not bona fide, In this regard, it may be relevant to refer to the decision of the Hon'ble ITAT. Mumbai in the case of DCIT 24(2), Mumbai vs. Unisynth Chemicals, Mumbai in ITA No. 5967/Mum/2014 dated 11/01/2017 wherein it is held as under:

On an appreciation of the material on record we are inclined to concur with the view of the CIT(A) that the a plausible one, in as much as the circumstances on which the additional income offered was because the disputed parties with whom these transactions were

made were non-cooperative and the assessee having no control over those parties was, therefore, not able to substantiate its claim with necessary material evidence.

8.6 Thus, it can only be concluded in this case that except for rejection of the explanation furnished by the assessee, there is no material to sustain the plea of concealment.

8.7 Further, the addition has been made purely on estimate basis. Under identical circumstances, the Hon'ble ITAT Mumbai in the case of Shri Deepak Gogri V. ITO 25(3)(2) in ITA No. 1396/Mum/2017 dated 23/11/2017, has held that there is no concealment of income or furnishing of inaccurate particulars of income as the profit element was determined by way of adhoc estimation

8.8 For the above reasons, in my considered opinion, the levy of penalty is entirely uncalled for. The same is accordingly deleted.”

3. Detailed findings so recorded by the CIT(A) are as per material on record. After applying the judicial pronouncements applicable to the facts of the instant case, he reached to the conclusion that addition is on estimated basis, since there was no concealment of income or furnishing of inaccurate particulars, penalty under Section 271(1)(c) was uncalled for. I do not see any reason to interfere in the findings of the CIT(A). Accordingly order of the CIT(A) is upheld.

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

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

Sd/-
(R.C. Sharma)
Accountant Member

Mumbai, Dated: 05th February, 2020

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -42, Mumbai
4. The Pr.CIT - 31, Mumbai
5. The DR, “SMC” Bench, ITAT, Mumbai

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.

