

**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. 325/MUM/2019 : A.Y : 2011-12

ITO, Ward-3(3), Thane
(Appellant)

Vs. M/s. Shree Siddhivinayak Steel Traders,
1203, Gautam Sindhu, Naupada,
Thane 400 602. Mumbai
PAN : AANFS8114N (Respondent)

Appellant by : Shri R. Bhoopathi
Respondent by : None

Date of Hearing : 21/01/2020
Date of Pronouncement : 29/01/2020

ORDER

PER VIKAS AWASTHY, JM

This appeal by the Revenue is directed against the order of CIT(A)-2, Thane dated 26.11.2018 for the assessment year 2011-12.

2. The brief facts of the case as emanating from the records are : In reassessment proceedings, the Assessing Officer held that the assessee made bogus purchases of Rs.3,14,412/- from Macos Iron and Steel Pvt. Ltd. The Assessing Officer made addition of the entire alleged bogus purchases. Further, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer vide order dated 30.09.2015 levied penalty of Rs.97,150/- under Section

271(1)(c) of the Act. Aggrieved against the levy of penalty, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order deleted the penalty. Hence, the present petition by the Revenue assailing the findings of CIT(A) in deleting the penalty.

3. Shri R. Bhoopathi representing the Department submitted that assessee had indulged in procuring bogus purchase bills from declared *hawala* dealers. On the said addition made by the Assessing Officer, penalty under Section 271(1)(c) of the Act was levied on account of 'furnishing of inaccurate particulars of income'. The learned DR submitted that the CIT(A) has deleted the penalty merely on the ground that there was no *mala fide* on the part of assessee to reduce taxable income. The learned DR prayed for reversing the order of CIT(A) and upholding the penalty order dated 30.09.2015.

4. We have heard the submissions made by the learned DR and have perused the orders of authorities below. It is a well-settled law that every addition made in assessment proceedings does not result in attracting penal provisions. In the instant case, addition has been made by the Assessing Officer on the entire 100% of the alleged bogus purchases. Apparently, the assessee has accepted the addition on account of smallness of the amount to be contested. Merely on the ground that assessee has not contested the quantum addition, penalty under Section 271(1)(c) of the Act cannot be fastened on the assessee.

5. Further, while examining the assessment order we observe that the Assessing Officer has initiated penalty proceedings under Section 271(1)(c) of the Act on the charge of filing of 'inaccurate particulars of income'. However,

while passing the order levying penalty, the Assessing Officer in para 8 of the order has mentioned both the limbs of Section 271(1)(c) of the Act, i.e. 'concealment' and 'furnishing inaccurate particulars of income'. The ambiguity in the mind of the Assessing Officer regarding the charge for which penalty is to be levied is apparent writ large. The Hon'ble Supreme Court of India in the case of *T. Ashok Pai vs CIT, 292 ITR 11 (SC)* has held that concealment of income and furnishing of inaccurate particulars of income carry different connotations. The Hon'ble Gujarat High Court in the case of *CIT vs Manu Engineering Works, 122 ITR 306 (Guj.)* has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear, penalty is not sustainable. Thus, penalty under Section 271(1)(c) of the Act cannot be levied in an ambiguous and vague manner.

6. The Hon'ble Jurisdictional High Court in the case of *CIT vs Samson Perinchery, 392 ITR 4 (Bom)* has held that penalty cannot be levied on a ground other than for which the penalty has been initiated. In the instant case, as is observed from the assessment order, penalty has been initiated by Assessing Officer for 'furnishing of inaccurate particulars of income' whereas, while passing the order under Section 271(1)(c) of the Act for levy of penalty, the Assessing Officer has made reference to both the charges, i.e. 'concealment' and 'furnishing inaccurate particulars of income'. The manner in which the Assessing Officer has initiated and levied penalty falls short of the legal requirements for levy of penalty under Section 271(1)(c) of the Act and hence, the penalty proceedings fail in judicial scrutiny. We find no merit in the appeal of Revenue, hence, the same is dismissed.

7. We further observe that the appeal of Revenue is liable to be dismissed on account of low tax effect in light of recent CBDT Circular No. 23 of 2019 dated 06.09.2019. The exceptions provided in para 10 of amended Circular 3 dated 20.08.2018 does not apply to penalty appeals.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in open Court on Wednesday, the 29th day of January, 2020.

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

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Date : 29th January, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai