

**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. 326/MUM/2019 : A.Y : 2009-10

ITO, Ward-1(4), Kalyan.
(Appellant)

Vs. Shabji Synthetics
Partner : Shri Anand Sajjankumar Rungta
Rungta Bhawan, Plot No. 3,
Umar Mosa Compound, Narpoli,
Bhiwandi, Thane 421 302.
PAN : AAFFS5844P (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 assessment year 2009-10.

2. The brief facts as emanating from the records are: The assessee is engaged in business of manufacturing, trading and job work of dyed and fancy yarn. The assessment for assessment year 2009-10 was reopened by the Assessing Officer on the basis of information received from Sales Tax Department, Govt. of Maharashtra stating that assessee has indulged in obtaining bogus purchase bills aggregating to Rs.1,06,677/- from *hawala* dealers. The Assessing Officer made addition of the entire alleged bogus

purchases while passing the assessment order dated 31.12.2013. The Assessing Officer also recorded satisfaction for initiating penalty proceedings under Section 271(1)(c) of the Act. The Assessing Officer, vide order dated 26.06.2014, levied penalty of Rs.32,964/- for 'furnishing inaccurate particulars of income'. Aggrieved against levy of penalty vide order dated 26.06.2014, the assessee filed appeal before the CIT(A). The CIT(A), vide impugned order, deleted the penalty. Hence, the present appeal by the Revenue against the findings of the CIT(A).

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. The learned DR submitted that the CIT(A) has deleted 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 26.06.2014.

4. We have heard the submissions made by 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 'inaccurate particulars of income' and 'concealment'. 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, 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. The Assessing Officer has to be specific in mentioning the charge for which the penalty is to be levied. The manner in which the Assessing Officer has initiated penalty falls short of the legal requirements for levy of penalty under Section 271(1)(c) of the Act and hence, the penalty proceedings are liable to be set aside. We find no merit in the appeal of Revenue.

6. 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.

7. 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

SSL

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