

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 6603/Mum/2018 (Assessment Year 2010-11)
I.T.A. No. 6604/Mum/2018 (Assessment Year 2012-13)

M/s. Champak Industries 390/392, Shankar Mansion, S.V.P. Road Vanita Vishram Chowk Mumbai-400 004. PAN : AACFC7672E (Appellant)	Vs.	DCIT Circle-19(1) Matru Mandir Tardeo Road Mumbai-40007. (Respondent)
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Assessee by	Shri Akash Kumar
Department by	Shri R. Bhoopathi
Date of Hearing	09.12.2019
Date of Pronouncement	18.02.2020

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee is directed against respective orders of learned CIT(A) pertaining to A.Y. 2010-11 & 2012-13.

A.Y. 2010-11

2. The issue raised is learned CIT(A) erred in confirming the penalty u/s. 271(1)(c) of the I.T. Act amounting to Rs. 69,240/-.
3. Brief facts of the case are leading to levy of penalty are that the Assessing Officer made the addition without making any enquiry of his own. He did not issue any notice to the alleged bogus suppliers. Addition in this case was made on account of information received from the sales tax department that the assessee has engaged into the bogus purchases amounting to Rs. 2,24,080/-. On this addition penalty was levied and penalty was confirmed by learned CIT(A).

4. Against this order the assessee has filed the appeal before the ITAT. I have heard both the counsel and perused the records.

5. I find that the assessment proceedings and penalty proceedings are distinct. Addition in quantum proceedings itself cannot epso facto with the conclusive proof for levy of penalty in this case. It is noted that in the assessment order addition was made by the Assessing Officer without any inquiry of his own from the alleged bogus suppliers. It is also noted that the sales were not doubted. In this view of the matter the assessee cannot be said to be guilty of furnishing inaccurate particulars of income or concealment of income. As a matter of fact in catena of cases dehorse any inquiry by the Assessing Officer addition have been set aside. Be as it may in my considered opinion conduct of the assessee is not contumacious to warrant levy of penalty u/s.271(1)(c) of the Act. Accordingly, drawing support from the decision of Hon'ble Apex Court in the case of Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26), I set aside the order of the authorities below and delete the penalty.

6. In the result, assessee's appeal stands allowed.

A.Y. 2012-13 :-

7. In the grounds of appeal raised for assessment year 2012-13 the assessee is aggrieved that learned CIT(appeals) has erred in sustaining disallowance on account of brokerage and commission amounting to Rs. 878,315/- an adhoc disallowance of Rs. 1,00,000 out of other expenses.

8. Brief facts leading to the above disallowances are as under :-

brokerage and commission:

The AO during the assessment proceedings required the assessee to substantiate the claim with documentary evidences along with details of services provided by the payees. The AO has noted in the assessment order that copies of the bills produced did not contain any details of services rendered and neither any documentary evidence was filed showing any

understanding with the assessee. He therefore disallowed the claim made on account of commission and brokerage.

9. Upon assessee's appeal learned CIT(appeals) upheld the order of the assessing officer on the ground that no further detail has been submitted by the assessee before him.

10. Ad hoc disallowance:

The AO in the assessment order has mentioned that the appellant has claimed expenses under various heads such as travelling, conveyance, office expenses and development expenses amounting to Rs. 4.34 lakhs. On perusal of the details furnished during the assessment proceedings, the AO noticed that part of the expenses were Incurred in cash and also by way of self made vouchers having no third party evidence. He accordingly made adhoc disallowance of Rs. 1,00,000/- out of total claim.

11. Upon assessee's appeal learned CIT(appeals) upheld the assessing officer's order

12. Against this order assessee is in appeal before ITAT.

13. I have heard both the counsel and perused the records. Learned counsel of the assessee prayed that assessee was not properly represented before the learned CIT appeals. He prayed that an opportunity may be given before the assessing officer to properly canvass the case.

14. Upon careful consideration I find that the additions on the above issues need proper consideration afresh on the part of the assessing officer. Learned counsel of the assessee has undertaken to co-operate before the assessing officer. Accordingly the issue stands remitted to the file of assessing officer. The assessing officer shall consider the issue afresh after giving the assessee proper opportunity of being heard. Before parting I may add that the assessing

officer shall pass appropriate cogent order not based upon surmise and conjecture.

15. In the result assessee's appeal stands allowed for statistical purposes.

Order has been pronounced in the Court on 18.2.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/02/2020

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,

(Assistant Registrar)
ITAT, Mumbai

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