

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 309/MUM/2019  
Assessment Year: 2010-11**

Dy. Commissioner of Income  
Tax Circle-3, Thane,  
Room No. 02, 6<sup>th</sup> Floor, Aashar  
IT Park, B-Wing, Wagle  
Industrial Estate, Road No. 16Z,  
Thane (W)-400604

**Appellant**

M/s Shree Jain Traders,  
Vs. Shop No. 01, Shringarpure House,  
Ram Maruti Road, Naupada,  
Thane (W)-400602.

**PAN No. ABLFS2297K  
Respondent**

Revenue by : Mr. V. Vinod Kumar, DR  
Assessee by : Mr. Subodh Ratnaparkhi, AR

Date of Hearing : 17/02/2020  
Date of pronouncement : 24/02/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Thane [in short 'CIT(A)'] and arises out of the penalty passed u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under :

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty by not appreciating the facts that the assessee could not

produce the alleged bogus parties for verification of genuineness of transaction during assessment proceedings as well as penalty proceedings and voluntary disclosure of his concealed income does not absolve the assessee from penalty.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty without appreciating the ratio laid down by the Hon'ble Supreme Court in the case of MAK Data (P) Ltd. v. CIT (358 ITR 593) (SC).

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 27.09.2010 declaring total income of Rs.17,99,382/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills of Rs.3,35,814/- from Payal Enterprises during the year under consideration, the AO made an addition of the above amount while framing the order u/s 143(3) r.w.s. 147 of the Act. Thereafter, the AO levied a minimum penalty of Rs.1,03,768/- u/s 271(1)(c) on the basis that the amount of Rs.3,35,814/- represents the concealed income of the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 27.11.2018, the Ld. CIT(A) deleted the penalty levied by the AO on the reason that (i) in quantum appeal, the then CIT(A) had adjudicated that 12.5% of bogus purchases of Rs.3,35,814/- is to be added to the income of the assessee; (ii) the addition to income has been sustained on estimation basis.

Further relying on the judgment of the Hon'ble Supreme Court in the case of *Dilip N. Shroff v. JCIT* (2007) 291 ITR 519, wherein it is held that "finding in assessment proceedings cannot automatically be adopted in penalty proceedings and the authorities have to consider the matter afresh

from different angles” and further relying on the decision in *CIT v. Reliance Petroproducts (P.) Ltd.* (2010) 322 ITR 158 (SC), wherein it is stated that “merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, attract the penalty u/s 271(1)(c) of the Act”, the Ld. CIT(A) deleted the penalty of Rs.1,03,768/- levied by the AO.

5. Before us, the Ld. counsel for the assessee relies on the order of the CIT(A), whereas the Ld. DR supports the order of the AO.

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, as mentioned earlier, in quantum appeal the CIT(A) had adjudicated that 12.5% of bogus purchases of Rs.3,35,814/- is to be added to the income of the assessee. In such a situation, the Ld. CIT(A) has rightly followed the decision in *Dilip N. Shroff* (supra) and *Reliance Petroproducts (P.) Ltd.* (supra) and deleted the penalty of Rs.1,03,770/- levied by the AO. Thus we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 24/02/2020.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

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

Mumbai;

Dated: 24/02/2020

Rahul Sharma, Sr. P.S.

**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,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**