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. 323/MUM/2019
Assessment Year: 2010-11

Income Tax Officer Ward–3(3), Thane Room No. 8, 6th Floor, B-Wing, Wagle Estate, Thane (W)-400604.	Vs.	Shri Sanjiv Narayan Sarnaik Prop. M/s. Space Electricals, 5, 2nd Floor, Vrindavan Apartment, Brahmin Society, Naupada, Thane (W) – 400602. **PAN No. ACBPS 6227 L**
Appellant		**Respondent**

Revenue by	:	Mr. R. Bhoopathi, DR
Assessee by	:	Mr. Anthony T D'Souza, AR
Date of Hearing	:	21/01/2020
Date of pronouncement	:	26/02/2020

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 [in short 'CIT(A)], Mumbai and arises out of the penalty levied 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 facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact that the assessee failed to prove the genuineness of the alleged bogus purchases from the Hawala parties during the course of assessment as well as penalty proceedings.

2. On facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact 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.
3. On facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty by not appreciating the fact that there was clear intention on the part of the assessee to reduce the taxable income by claiming purchases from non-genuine parties.
4. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 27.09.2010 declaring total income of Rs.9,66,137/-. The nature of business of the assessee is manufacturing of machinery & spares related to packing of dairy products. In the assessment completed u/s 143(3) r.w.s. 147 dated 29.01.2014, the Assessing Officer (AO) made an addition of Rs.3,46,847/- by treating the purchases made from three parties as bogus. Subsequently, the AO after initiating the penalty proceedings, levied a penalty of Rs.1,07,174/- u/s 271(1)(c) of the Act, by holding that the assessee had concealed income of Rs.3,46,847/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 14.11.2018, the Ld. CIT(A) observed that (i) as per the decision of the Hon'ble Karnataka High Court in the case of *CIT v. Manjunatha Cotton & Ginning Factory* (2013) 35 taxmann.com 250, the very fact that the assessee agreed to pay tax and did not challenge the

assessment order cannot be construed as *mala fide*; (ii) as per the decision of the Hon'ble Supreme Court in the case of *Dilip N. Shroff v. JCIT* (2007) 291 ITR 519, the findings in assessment proceedings cannot automatically be adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle; (iii) as per the decision in *CIT v. Reliance Petroproducts (P.) Ltd.* (2010) 322 ITR 158 (SC), merely because the assessee had claimed 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.

Thus the Ld. CIT(A) deleted the penalty of Rs.1,07,174/- made by the AO by observing that (i) the levy of penalty is merely on disallowance of purchases and not finding of concealment of any particular kind or *mala fide* intention to reduce taxable income, (ii) addition made on account of disallowance of purchases as bogus automatically cannot justify penalty levied u/s 271(1)(c) of the Act.

5. Before us, the Ld. Departmental Representative (DR) submits that on receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills amounting to Rs.3,46,847/- from three parties, the AO made an addition of the above sum while completing the assessment u/s 143(3) r.w.s. 147 of the Act. It is stated that as the assessee had concealed the above income, the AO has rightly levied penalty of Rs.1,07,174/- u/s 271(1)(c) of the Act and the same may be restored.

6. On the other hand, the Ld. counsel for the assessee submits that the assessee had submitted during the course of assessment proceedings that he

had actually purchased the materials as referred to in the bills issued by the hawala dealers in the ordinary course of business. Further, it is stated that the statement given by the hawala dealers is not backed by any incriminating material or any document which could substantiate the bogus purchases made by the assessee. It is further stated that in the instant case the statement given by the hawala dealer was never confronted to the assessee nor has the said statement stood the test of cross-examination by the assessee, so nothing remains with the revenue to incriminate the assessee. Thus the Ld. counsel submits that the order passed by the CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. In the instant case, as mentioned earlier the AO has made an addition of Rs.3,46,847/- towards bogus purchases. It is found that the statement given by the hawala dealer was never confronted to the assessee. It is well settled that in the scheme of the Income Tax Act, the proceedings for imposition of penalty, though emanating from proceedings of assessment, are essentially independent and a separate aspect of the proceedings which closely follow the assessment proceedings. Further, it is well settled that findings given in assessment proceedings are certainly relevant, but such findings are material alone and may not justify the imposition of penalty in a given case, because the considerations that arise in penalty proceedings are different from those that arise in assessment proceedings. As pointed out by the Hon'ble Supreme Court in *Anantharam Veerasinghaiah & Co. v. CIT* (1980) 123 ITR 457, 462 (SC), the findings recorded in the assessment order constitute good evidence in the penalty proceedings but those findings cannot be regarded as conclusive for the purpose of the penalty proceedings.

Whether a penalty can be imposed in a given case, the entirety of the circumstances must be taken into account. As mentioned earlier in the instant case, the statement given by the hawala dealers were not confronted to the assessee. Further, a perusal of the assessment order clearly indicates that the AO has not made even preliminary inquiry before making an addition of Rs.3,46,847/-.

In view of the above factual scenario, we are of the considered view that the Ld. CIT(A) has rightly deleted the above penalty by relying on the decisions mentioned at para 4 hereinbefore. We affirm the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 26/02/2020.

Sd/-	Sd/-
(VIKAS AWASTHY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 26/02/2020
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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai