

**IN THE INCOME TAX APPELLATE TRIBUNAL, “F” BENCH UMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
ITA No.1436/Mum/2019 for Assessment Years: 2011-12**

ACIT-9(3)(1), Room No. 215, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs	M/s Filtration Engineers India Pvt. Ltd., 28-003, Sunrise, Lokhandwala Complex, Andheri (W), Mumbai-400053 PAN : AAACF4084G
(Appellant)		(Respondent)

Appellant by :	Miss Samatha Mullamudi (Sr. DR)
Respondent by :	None

**Date of Hearing : 20/02/2020
Date of Pronouncement : 20/02/2020**

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)-16, [CIT(A)], Mumbai dated 24.12.2018 for Assessment Year 2011-12. The revenue has raised the following grounds of appeal:
 - i. “Whether on the facts and in the circumstances of the case and in law, was Id. CIT(A) right in deleting the penalty levied by the Assessing Officer u/s. 271(1)(c) of the Income Tax Act, 1961?”
 - ii. The appellant prays that the order of the Id. CIT(A) on the above ground be set aside and that of the AO be restored.
2. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing of industrial filters. The assessment was

completed for AY 2011-12 was completed under section 143(3) r.w.s. 147 dated 17.03.2016. The Assessing Officer while passing the assessment order made addition/disallowance on account of bogus purchases. The Assessing Officer disallowed 12.5% of aggregate of alleged bogus purchases of Rs. 1,12,35,102/-. The Assessing Officer calculated the disallowance of Rs. 14,04,388/-.

3. The Assessing Officer while passing the assessment order initiated the penalty under section 271(1)(c) of the Act. The show-cause notice under section 271(1)(c) r.w.s 274 dated 16.05.2017 was served upon the assessee. In response to the show-cause, the assessee filed reply dated 22.05.2017. In the reply, the assessee contended that the purchases made by assessee were genuine. It was stated that the assessee made the payment through Account Payee cheques, all the evidence pertaining to the purchase bills, delivery challans and copy of ledger accounts were furnished. It was also stated that due to long gap, the assessee could not produce the vendors and aggregate for disallowance @ 12.5% out of the total purchases. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer levied the penalty @ 100% of the tax sought to be evaded on disallowance of Rs. 14,04,388/-. The Assessing Officer computed the penalty of Rs. 4,66,502/- in its order dated 31.05.2017 passed under section 271(1)(c).

4. On appeal before the Id. CIT(A), the entire penalty was deleted. The Id. CIT(A) while deleting the penalty followed the decision of Tribunal in M/s Chempure vs. ITO (40 SOT 164), Earthmoving Equipment Service Corporation vs. Dy.CIT [2017] 84 taxmann.com 51 (Mumbai Trib.). Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.
5. None appeared on behalf of assessee; the notice sent through registered post with acknowledgement due (RPAD) returned back un-served with the remark of postal authority "Left". Thus, we left no option except to hear the submission of Id. Departmental Representative (DR) for the revenue and decide the appeal on the basis of submission of Id. DR and the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR for the revenue submits that the assessee accepted the addition and no further appeal was filed before the First Appellate Authority in quantum assessment. The assessee furnished inaccurate particulars of income and could not substantiate the genuineness of purchases.
6. We have considered the submission of Id. DR and perused the order of lower authorities. There is no dispute that while passing the assessment order dated 17.03.2011 under section 143(3) r.w.s. 147. The Assessing Officer made the disallowance on estimated basis. The Assessing Officer disallowed 12.5% of aggregate of total alleged bogus purchases. The

Assessing Officer levied the penalty on the disallowances made while passing the assessment order. Before the Id. CIT(A), the assessee made exhaustive submission and relied upon the various case law including the decisions of M/s Chempure vs. ITO (supra) & Earthmoving Equipment Service Corporation vs. Dy.CIT (supra). The Id. CIT(A) after considering the submission of assessee concluded that no penalty under section 271(1)(c) can be levied on *ad hoc* addition and deleted the entire penalty levied under section 271(1)(c).

7. We have noted that the Id. CIT(A) while passing the impugned order has followed the order of Tribunal in M/s Chempure vs. ITO (supra) & Earthmoving Equipment Service Corporation vs. Dy.CIT (supra). In our view, it is now settled position under the law that no penalty under section 271(1)(c) is leviable on *ad hoc* addition. Therefore, we affirmed the order passed by Id. CIT(A). No contrary facts or law is brought to our notice to take other view.
8. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 20/02/2020.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai, Date: 20.02.2020

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Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

BY ORDER

**Assistant Registrar
ITAT Mumbai**