

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

**BEFORE SHRI R.C. SHARMA (ACCOUNTANT MEMBER) AND
SHRI PAWAN SINGH (JUDICIAL MEMBER)**

**ITA No. 1291/MUM/2019
Assessment Year: 2009-10**

ACIT, Circle-3,
2nd floor, Rani Mansion,
Murbad Road, Kalyan West-
421301.

PAN No. ACHPK9603L

Appellant

Vs. Mohan Balkrishna Karve,
Karve Bungalow, Opp. Shanti
Nagar, Nandivali Road,
Dombivali (E)-421201.

Respondent

Revenue by : Mr. Mohammed Rizwan, DR

Assessee by : Mr. S.L. Jain, AR

Date of Hearing : 04/03/2020

Date of pronouncement: 04/03/2020

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER:

This appeal by Revenue is directed against the order of Id. CIT(A)-1, Thane dated 03.12.2018 for Assessment Year 2009-10. The Id. CIT(A) confirmed the order of Assessing Officer in levying the penalty under section 271(1)(c). The Revenue has raised the following grounds of appeal:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without properly appreciating the decisions of the Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. Vs CIT(Civil Appeal No. 9772 of 2013)", the Hon'ble Gujarat High Court's decision in the case of N. K. Proteins Ltd, Tax Appeal No. 242 of 2003 dated 20/06/2016 against

which the SLP was dismissed by the Hon'ble Supreme Court and also ignoring the fact that Department received specific credible information in this case from the Sales Tax Department of the State Government of Maharashtra" in respect of non-genuine purchases.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) without appreciating the fact that there was a definite finding in the assessment order in respect of bogus purchases and of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.

2. Brief facts of the case are that the Assessing Officer (AO) while passing the assessment order made disallowance @ 25% of the impugned/bogus purchases shown from hawala dealers. The Assessing Officer initiated penalty under section 271(1)(c) of the Act, while passing the assessment order. The Assessing Officer levied penalty vide its order dated 28.04.2017. The Assessing Officer levied penalty @ 100% of tax sought to be evaded. On appeal before the Commissioner (Appeals), the penalty was deleted. The Ld. CIT(A) deleted the penalty by taking view that levy of penalty is merely on disallowance of purchases and not finding of concealment of any particular or *mala fide* intention to reduce tax income. Thus aggrieved by the order of CIT(A), the Revenue has filed the present appeal before us.

5. We have heard the submission of Id. Departmental Representative (DR) for revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Ld. DR for the Revenue submits that the Assessing Officer while passing the assessment order made the disallowance on account of bogus purchases. The assessee has shown purchases from hawala traders. The hawala traders were indulging in

providing accommodation entry. The assessee avail the accommodation entry to inflate the expenses. The assessee during the assessment could not substantiate the genuineness of purchases. The Assessing Officer reasonably disallowed the purchases @ 25% and in penalty order levied penalty only on amount of purchases. The Ld. DR paid for reversing the order of CIT(A) and we restore the order of Assessing Officer.

5. On the other hand, the Ld. AR of the assessee submits that the addition in the assessment order is passed an estimated addition and no penalty is leviable and estimated addition.

6. We have considered the submission of both the parties and perused the material available on record. There is no dispute that the Assessing Officer while passing the assessment order treated the purchases of assessee shown from the person which were declared hawala dealers by the Sales Tax Department, Government of Maharashtra. The Assessing Officer made estimated disallowance of disputed/impugned/purchases shown from hawala dealers @ 25%. The Assessing Officer levied penalty on such estimated disallowance. It is settled law that no penalty is leviable on addition made on estimated basis. Therefore, we affirm the order of Ld. CIT(A) on aforesaid observation.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 4th day of March 2020.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai;

Dated: 04/03/2020

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,

(Assistant Registrar)
ITAT, Mumbai