

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1266/MUM/2019 (A.Y: 2010-11)

DCIT Circle – 3 Room No. 02, B-Wing, 6 th Floor Ashar I.T Park, 6 th Floor Road No. 16Z Wagle Industrial Estate Thane – 400 604	v.	Smt Smita Vilas Simpi Gr/1 st Floor, Moreshwar Kamal Bldg. Dr. Ramesh Pradhan Marg Talaopali, Thane (W) Mumbai – 400 602 PAN:AQSPS4519A
(Appellant)		(Respondent)

Assessee by : None
Department by : Shri Bheraram

Date of Hearing : 03.03.2020
Date of Pronouncement : 13.03.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 2, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.12.2018 for the Assessment Year 2010-11.

2. Revenue has raised the following grounds in its appeal: -

"1. On the facts & in the circumstances of the case, and in law, the Ld.CIT(A) has 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 the facts & in the circumstances of the case, and in law, the Ld.CIT(A) has 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 the facts and in the circumstances of the case, and in law, the Ld.CIT(A) has 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. *It is respectfully submitted that the penalty was levied for the additions made on the basis of information received from Law enforcement agency of the State Government of Maharashtra i.e. Sale Tax Department.*

5. *It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11/07/2018 amended vide letter dated 20.08.2018 as per per para 10(e) of the said circular. Therefore, the order of the CIT(A) may be vacated & that of the Assessing Officer may be restored*

6. *The appellant craves leave to add, amend, alter or delete any ground of appeal."*

3. Briefly stated the facts are that, assessee an individual engaged in the business of "Computer & Accessories Sales and Services" filed return of income on 29.09.2010 declaring income of ₹.19,00,960/-. Assessment was reopened u/s. 147 of the Act and reassessment was completed on 19.02.2015 u/s. 143(3) r.w.s 147 of the Act determining the income at ₹.20,62,898/-. While completing the reassessment the Assessing Officer

treated purchases of ₹.1,61,938/- made from M/s. Blue Nile Enterprises as non-genuine on the basis of the information received from Sales Tax Department, Government of Maharashtra that assessee has received accommodation entries from the party without making any purchases but made purchases only in gray market. The Assessing Officer treated such purchases from the party as non-genuine as the assessee could not produce the parties and also could not establish the movement of goods. Thus, the Assessing Officer treated entire purchases as non-genuine and brought to tax. Assessing Officer initiated penalty proceedings and levied penalty u/s. 271(1)(c) of the Act stating that the assessee has furnished inaccurate particulars of its income and concealed its income within the meaning of section 271(1)(c) of the Act. On appeal the Ld.CIT(A) deleted the penalty. Against this order of the Ld.CIT(A), revenue is in appeal before us.

4. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off these appeals on hearing the Ld. DR on merits.

5. Ld. DR vehemently supported the order of the Assessing Officer.

6. Heard Ld.DR and perused the orders of the authorities below. The penalty was levied by the Assessing Officer on the disallowance of purchases made by the assessee from various parties, treating them as non-genuine. Assessing Officer while completing the assessment was of the view that the assessee made purchases in the gray market and he has obtained only accommodation entries from various parties and therefore he has disallowed the purchases as the assessee could not file confirmations from the parties. Mere disallowance of expenses would not attract the penalty automatically. Ld.CIT(A) considering the submissions of the assessee as well as the averments in the penalty order, deleted the penalty with the following observations: -

"5. I have carefully considered the facts of the case, findings of the AO and material placed on record. It is observed that there is a normal tendency to subject an assessee to penalty u/s 271(1)(c) in all cases where the assessee refrains to file an appeal pursuant to an assessment order, with a hope to end the nightmare which began with selection of case for scrutiny by accepting the general additions in assessment order. Penalty is straightaway levied merely because no appeal been filed against the quantum order. The Hon'ble Supreme Court in the case of Sir Shadilal Sugar Mills (168 ITR 7051) held that there may be a hundred and one reasons for not protesting and agreeing to an addition but that does not follow to the conclusion that the amount agreed to be added was concealed income. The Hon'ble Karnataka High Court in case of CIT v. Manjunatha Cotton & Ginning Factory (2013 35 taxmann.com 250) categorically held that:-

"...The very fact that the assessee agreed to pay tax and did not challenge the assessment order, cannot be construed as mala fide."

6. *Following judicial pronouncements can also be relied on in support of the proposition that voluntary surrender of income does not attract penalty u/s 271(1)(c) of the Act-*

- *CIT vs Jayaraj Talkies (1999) 239 ITR 914 (Mad HC): - Mere agreement to addition of income or surrender of income did not comply concealment of income.*
- *CIT v/s M George & Brothers (1987) 59 CTR (Kerala HC) 298:- Where the assessee for one reason or other agrees or surrenders certain amounts for assessment, the imposition of penalty solely on the basis of assessee's surrender will not be well founded.*
- *Cit V/S Surajbhan (2007) 294 ITR 481 (P&H HC):- Penalty cannot be imposed merely on account of higher income having been subsequently declared.*

7. The Supreme Court has recently reiterated the law in case of *Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519* by holding in para 62 that finding in assessment proceedings cannot automatically adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle.

8. In the case of *CIT v. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC)* it was held as under:

"We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. 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, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature".

9. *The levy of penalties is merely on disallowances of purchases and not finding of concealment of any particular or mala-fide intention to reduce taxable incomes. Additions made on account of disallowances of purchases as bogus automatically cannot justify the penalties levied u/s 271(1)(c) of the Act. Accordingly, the penalties of Rs. 50,040/- imposed u/s 271(1)(c) of the IT. Act, by the AO, are hereby deleted and the grounds of appeal, raised as above, for both these appeals, are allowed."*

7. On a reading of the observations and findings of the Ld.CIT(A) we do not find any valid reason to disturb the findings of the Ld.CIT(A) in deleting the penalty levied u/s. 271(1)(c) of the Act on disallowance of purchases as mere disallowance will not attract penalty and when there is complete disclosure of expenses in the books by the assessee. Grounds raised by the revenue are rejected.
8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 13th March, 2020

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 13/03/2020
Giridhar, Sr.PS

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

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum