

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

**ITA Nos.5329 to 5331/Mum/2018
(Assessment Years: 2009-10 to 2011-12)**

Income Tax Officer, Ward 1(5)
Room No. 14, B Wing, 6th Floor,
Ashar I.T. Park, Road No. 16Z,
Wagle Industrial Estate
Thane (West) – 400604

Shri Hemant Laxman Panchal
626,6th Floor, Business Part,
City of Joy ACC Cement Compound,
Jata Shankar Dossa Marg,
Mulund (W) 400080

PAN – AGRPP7868A

(Appellant)

(Respondent)

Appellant by: Shri Ajit Pal Singh Daia, D.R
Respondent by: None
Date of Hearing: 22.01.2020
Date of Pronouncement: 29.01.2020

ORDER

PER BENCH:

The captioned appeals filed by the revenue are directed against the consolidated order passed by the CIT(A)-3, Nasik [Camp office : Thane], dated 08.06.2018 which in turn arises from the respective orders passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12. As a common issue is involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a common order. We shall first advert to the appeal of the revenue for A.Y. 2009-10. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “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 appreciating the fact that the levy of penalty on estimated addition on account of bogus purchases doesn't alter the fact of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.

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 to establish that the purchases were bogus and in respect of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.
3. The appellant craves leave to add, amend, alter or delete any ground of appeal.
4. The order of the CIT(A) may be vacated and that of the assessing officer may be restored.”

2. Briefly stated, the assessee who is engaged in the business of sale and servicing of xerox machines and toners had e-filed his return of income for A.Y. 2009-10 on 20.09.2009, declaring a total income of Rs.4,57,661/-. Subsequently, on the basis of information received by the A.O from the sales tax department that the assessee as a beneficiary had obtained accommodation bills aggregating to Rs.13,00,159/- from 4 hawala dealers without any actual supply of material, his case was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from the following 4 tainted parties:

Name	Amount (Rs.)
Om Corporation	2,56,269/-
Blue Nile Enterprise	3,17,338/-
Savita International	1,46,250/-
Great International	5,80,302/-
Total	13,00,159/-

On the basis of independent inquiries, it was gathered by the A.O that the aforementioned parties had not supplied any material to the assessee and had only provided accommodation entries. Notices issued by the A.O to the aforementioned parties under Sec. 133(6) of the Act also remained uncomplied. The A.O brought the aforesaid factual position to the notice of the assessee and directed him to produce the aforementioned parties for necessary examination before him. However, the assessee failed to comply with the aforesaid direction of the A.O. As the assessee failed to substantiate the authenticity of the aforesaid purchase transactions to the satisfaction of the A.O, therefore, he treated the purchases of Rs.13,00,159/- which were claimed by the assessee to have been made from the aforementioned parties as bogus purchases. Accordingly, the entire value of the bogus purchases of Rs.13,00,159/- were added by the A.O to the returned income of the assessee. The A.O while framing the assessment also initiated penalty proceedings under Sec. 271(1)(c) of the Act.

4. Aggrieved, the assessee assailed the quantum assessment in appeal before the CIT(A). After necessary deliberations the CIT(A) restricted the addition to 20% of the aggregate value of the alleged hawala purchases. As such, the CIT(A) restricted the addition to Rs.2,60,031/- as against the addition of Rs.13,00,159/- made by the A.O.

5. The A.O after receiving the order of the CIT(A) called upon the assessee to explain as to why penalty under Sec.271(1)(c) as regards the addition of bogus purchase of Rs.2,60,031/- (20% of Rs.13,00,159/-) as was sustained by the CIT(A) may not be imposed upon him. As the reply filed by the assessee did not find favour with the A.O, therefore, he imposed a penalty of Rs.76,000/- under Sec. 271(1)(c) of the Act.

6. Aggrieved, the assessee assailed the order passed by the A.O under Sec. 271(1)(c) before the CIT(A). After necessary deliberations, it was observed by the CIT(A) that the quantum addition was restricted by his predecessor to the extent of 20% of the impugned value of the bogus purchases. Observing, that the A.O had failed to place on record any concrete material which would conclusively establish that the purchases claimed by the assessee were bogus or his explanation was not correct, the CIT(A) was not persuaded to subscribe to the imposition of penalty under Sec. 271(1)(c) on the assessee. In fact, it was observed by the CIT(A) that the addition sustained in the hands of the assessee was merely backed by a process of estimation. As such, on the basis of his aforesaid deliberations the CIT(A) holding a conviction that the imposition of penalty under Sec. 271(1)(c) on the assessee was not justified, therefore, quashed the same.

7. The revenue being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. We find that the assessee respondent despite having been put to notice about the hearing of appeal has failed to appear before us. We thus in the backdrop of the aforesaid facts proceed with the hearing of the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963 after hearing the appellant revenue and perusing the orders of the lower authorities. The Id. Departmental representative (for short 'D.R') had relied on the order passed by the A.O under Sec. 271(1)(c) of the Act. It was submitted by the Id. D.R that as the assessee had booked bogus purchases, therefore, the A.O had rightly imposed penalty under Sec. 271(1)(c) of the Act. It was averred by the Id. D.R, that the CIT(A) was in error in vacating the penalty imposed by the A.O under Sec. 271(1)(c) of the Act.

8. Admittedly, the assessee in the course of the assessment proceedings had failed to substantiate the genuineness and veracity of the impugned purchase transactions to the satisfaction of the A.O. However, at the same time we also cannot remain oblivious of the fact that the assessee had to some extent placed on record certain material in order to substantiate the authenticity of the purchase transactions under consideration. Apart from that, we find, that the addition made by the A.O in the course of the quantum appeal had been restricted by the CIT(A) on an estimate basis to 20% of the aggregate value of the impugned purchases of Rs.13,00,159/-. As a result thereof, it can safely be concluded that the addition/disallowance that was sustained in the hands of the assessee is merely backed by a process of estimation and not on the basis of any concrete material proving to the hilt the ingenuineness of the purchases which were claimed by the assessee to have been made from the aforementioned parties. In the backdrop of the aforesaid facts, it can safely be concluded that though the unproved purchases justified an addition in the hands of the assessee, however, no penalty under Sec. 271(1)(c) merely on the said standalone basis could have been validly imposed upon him. We find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Upendra V. Mithani (ITA (L) No. 1860 of 2009)**, dated **05.08.2009**, wherein it was observed as under:-

“The issue involved in the appeal revolves around deletion of penalty under Section 271(1)(c) of the I.T. Act. The Tribunal has concurred with the view taken by the Commissioner of Income Tax (A). The Commissioner of Income Tax (A) has rightly taken a view that no penalty can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. If the assessee gives an explanation which is unproved but not disproved, i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false. The view taken by the Tribunal is a reasonable and possible view. The appeal is without any substance. The same is dismissed in limine with no order as to costs.”

Also, support is drawn from the order of the **Hon'ble Supreme Court** which had dismissed the 'Special leave Petition' (SLP) of the revenue in **CIT-2 Lucknow Vs. U.P State Bridge Corporation Ltd. (SLP) (Civil) (2018) 97 Taxman.com 279 (SC)**, and upheld the order of the Hon'ble High Court of Allahabad. In the aforesaid case, the High Court had observed that where a claim of expenditure is neither found inaccurate nor could be viewed as concealment of income on the part of the assessee, then merely because the said claim was not accepted or acceptable to the revenue by itself would not attract penalty under Sec. 271(1)(c). Accordingly, in the case before us, as the revenue had failed to disprove to the hilt on the basis of clinching

documentary evidence the authenticity of the claim of the assessee of having made purchases from the aforementioned parties, therefore, merely on the basis of such unproved claim of purchases penalty under Sec. 271(1)(c) could not have been validly imposed upon him.

9. We thus in terms of our aforesaid observations find no infirmity in the view taken by the CIT(A), who in our considered view had rightly concluded that as the addition sustained in the hands of the assessee was merely backed by a process of estimation and not on the basis of any concrete material disproving the veracity of his claim of having made genuine purchases from the aforementioned parties, therefore, uphold his order.

10. Resultantly, the appeal filed by the revenue is dismissed.

ITA Nos. 5330 & 5331/Mum/2018
A.Y. 2010-11 & A.Y. 2011-12

11. As the facts and the issue involved in the captioned appeals of the assessee for A.Y. 2010-11 in ITA No. 5330/Mum/2018 and A.Y. 2011-12 in ITA No.5331/Mum/2018 remains the same as were there before us in the appeal of the revenue for A.Y. 2009-10 in ITA No.5329/Mum/2018, therefore, our order therein passed shall apply *mutatis mutandis* for the disposal of the captioned appeals.

12. Resultantly, the appeals of the revenue for A.Y. 2010-11 in ITA No. 5330/Mum/2018 and A.Y. 2011-12 in ITA No. 5331/Mum/2018 are dismissed on the same terms.

13. The appeals of the revenue for A.Y. 2009-10 in ITA No.5329/Mum/2018, A.Y. 2010-11 in ITA No.5330/Mum/2018 and A.Y. 2011-12 in ITA No. 5331/Mum/2018 are dismissed.

Order pronounced in the open court on 29.01.2020

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

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 29/01/2020
Rohit, 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//
(Sr. Private Secretary)
ITAT, Mumbai.