

आयकर अपीलीय अधिकरण "SMC-II" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No.1844 & 1845/Mum/2019
(निर्धारण वर्ष / Assessment Years 2009-10 & 2010-11)

Vijayan P. Meparamba F-505, B-New Mayur Apartment Military Road, Marol, Andheri East, Mumbai	बनाम/ Vs.	The Income Tax Officer, Ward 26(3)(4) Pratyakshkar Bhavan, C/11, 5 th Floor, BKC, Bandra E, Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AANPM9331K		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar H. Ansari, DR

सुनवाई की तारीख / Date of hearing:	15.06.2020
घोषणा की तारीख / Date of pronouncement:	15.06.2020

आदेश / O R D E R

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

These appeals of assessee are arising out of the orders of Commissioner of Income Tax (Appeals)- 38, Mumbai in Appeal Nos. CIT(A)-38/ITO-26(3)(4)/IT-367&501/2015-16 & 2016-17 dated 29.11.2018 & 22.10.2018. The penalties were levied by



ITO ward 26(3)(4) under section 271(1)(c) of the Act vide order dated 22.09.2015 & 25.04.2016.

2. The only common issue in these appeals of assessee is as regards to the order of CIT(A) confirming the levy of penalty under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income amounting to ₹ 98,00,000/- in Assessment Year 2009-10 and ₹70,000/- in Assessment Year 2010-11. The identical grounds were raised in both the years. Hence, we will take the facts from Assessment Year 2009-10. The grounds raised in Assessment Year 2009-10 in ITA No. 1844/Mum/2019 read as under: -

"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the penalty under section 271(1)(c) of ₹ 98,000/- for furnishing inaccurate details of income.

2. On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that:

-the appellant offered the amount to tax in the course of assessment proceedings under section 140(3) r.w.s 147 to avoid litigation.

-Addition made in the assessment order u/s 143(3) r.w.s 147 is an adhoc and estimated addition."



3. We have heard the learned Departmental Representative and gone through the facts and circumstances of the case. We noted that the Assessing Officer received information from Sale Tax Department of Maharashtra that the assessee is one of the beneficiaries and received accommodation entries of bogus purchases during the Financial year 2008-09 relevant to this Assessment Year 2009-10 from M/s Baba Steel amounting to ₹3,69,207/-. The Assessing Officer noticed that assessee replied that it has made purchases and recorded the purchases in the books of accounts, entered into stock register and also filed statement of bank account of the hawala parties as well as the assessee wherein it is clearly depicted that the payments for these purchases are made by account payee cheques but according to Assessing Officer there is no details in regard to transportation of the goods and no transportation charges are recorded in the books of accounts. Hence, the Assessing Officer added the entire bogus purchases of ₹3,69,207/- and added to the total income of the assessee and also initiated the penalty proceeding under section 271(1)(c) of the Act. Accordingly, the Assessing Officer levied under section 271(1)(c) of the Act on the amount of ₹3,69,207/- for furnishing the inaccurate particulars of income and accordingly, imposed minimum penalty under section 271(1)(c) of the Act at ₹97,397/-. Aggrieved, assessee preferred the appeal before CIT(A) who also confirmed the action of the Assessing Officer. Aggrieved, assessee came in appeal before Tribunal.



4. We noted that the assessee has declared these purchases of M/s Baba Still in its books of account and filed the documentary evidences such as books of account, stock register, statement of books of account evidencing payment of these purchases by account payee cheques and other details except transportation receipts. In our view the Assessing Officer has merely levied the penalty on suspicion and as per the penalty order of the Assessing Officer under section 271(1)(c) of the Act nowhere it is proved that assessee has furnished the inaccurate particulars of income and once there is no finding that this case of furnishing of inaccurate particulars lacks that finding penalty under section 271(1)(c) of the Act cannot be imposed. Hence, we delete the penalty and allowed the appeal of the assessee.

5. Similar are the facts in Assessment Year 2010-11 in ITA No.1845/Mum/2019 and as well as taking a consistent view, we delete the penalty for this year also.

6. In the result, both, the appeals of assessee are allowed.

Order pronounced in the open court on 15.06.2020

Sd/-
(मंजूनाथ जी / MANJUNATHA G,)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-
(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 15.06.2020
सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai