

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.5351/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2011-12)

Reliable Metal Industries 21, Chandra Milan, M. G. Road, Vile Parle (E), Mumbai-400057.	बनाम/ Vs.	DCIT-25(3) C-10, Pratyaskha Kar Bhavan, Bandra Kurla Complex, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFR6082K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Mehul Shah	
Revenue by:	Ms. Jothilakshmi Nayak (SR. AR)	

सुनवाई की तारीख / Date of Hearing: 10/02/2020

घोषणा की तारीख /Date of Pronouncement: 19/03/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 18.06.2018 passed by the Commissioner of Income Tax (Appeals)-37, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

“Being aggrieved by the orders of the Deputy Commissioner of Income Tax- 25 (3) Mumbai, and learned Commissioner of Income-tax (Appeal) - 37, Mumbai this appeal petition is filed on the following amongst other



grounds of appeal, which it is prayed may be considered without prejudice to one another.

1. On the facts, and in circumstances of the case, and in law, the Assessing Officer erred in imposing penalty under section 271 (1) (c) of the Income-tax Act 1961 without appreciating that the notice initiating penalty under section 274 read with section 271 (1) (c) was bad in law.

2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income- tax (Appeal) erred in partly upholding action of the Assessing Officer in imposing penalty under section 271(1) (c) of the Income-tax Act 1961 amounting to RS. 54.070 being 100% of tax sought to be evaded on alleged concealed income on account of disallowing purchases on estimated basis amounting to RS. 174,987 without appreciating that the addition of alleged non-genuine purchases was made on a difference of opinion; and there was neither concealment of income nor filing of inaccurate of income, as the Appellant had furnished all material particulars in support of its claim of purchases further supported by the order of MVAT Department accepting the same purchases which the Assessing Officer treated as non- genuine.

3. Your Appellant craves leave to add to, amend, alter, modify, and / or delete any of the above grounds of appeal at or before final disposal of appeal."

3. The brief facts of the case are that the assessee filed its return of income on 14.09.2011 declaring total income to the tune of Rs.25,02,573/-. Thereafter the case of the assessee was reopened upon the information received from the Sales Tax Authorities in which it was conveyed that the assessee has taken the bogus purchase entries from M/s. Dhanera Metals in sum of Rs.11,39,606/- and from M/s. Prime Steel Impex in sum of Rs.2,85,948/-. The total bogus entries was in sum of Rs.14,25,554/-. Thereafter, the case of the assessee was



reopened. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. After the reply of the assessee 12.275% of the bogus purchase was added to the income of the assessee. The total addition was of Rs.1,74,987/-. The total income of the assessee was assessed to the tune of Rs.26,77,560/-. The penalty proceeding was initiated and after the reply of the assessee, the penalty to the tune of Rs.1,74,987/- was levied. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that in the assessee's own case in the similar circumstances for the A.Y.2009-10 & 2010-11, the penalty has been deleted by the Hon'ble ITAT in ITA. No.1261/M/2017 dated 30.08.2017 and in ITA. No.758/M/2018 dated 22.03.2019 respectively, therefore, the penalty is not liable to be sustainable in the eyes of law. However, on the other, the Ld. Representative of the Department has refuted the said contention. Keeping in view of the argument advanced by the Ld. Representative of the parties and perusing the record, we noticed that the addition has been estimated to the extent of 12.5% upon the bogus purchase and on these facts the penalty has been initiated which has been confirmed by the CIT(A) in the order under challenged. The similar issue has come before the Hon'ble ITAT in the assessee's own case for the A.Y.2009-



10 bearing ITA. No.1261/M/2017 in which the penalty has been order to be deleted. The relevant para no. 5 is hereby reproduced as under.:-

“5. We have heard the rival submissions and have perused the material available on record. We find that the assessment was reopened on the basis of the information received from the DGIT (Investigation) that during the impugned assessment year, the assessee made purchases from the dealers, who were shown as hawala dealers in the website of the Sales tax Department of State of Maharashtra. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made purchases amounting to ` 23,19,151/- from four parties viz. Nisha Enterprise, Dhanera Metal Corporation, Manish Industrial Corporation and Shidhsila Tradelinks Private Ltd. The Assessing Officer, on the basis of the gross profit percentage, disallowed 12.5% out of the total purchases made from the four such hawala dealers. Admittedly, the addition was made on estimation basis. The Co-ordinate Bench of the Ahmedabad Tribunal in the case of Ruchi Developers vs. ITO (supra), and the Mumbai Bench in the case of Earthmoving Equipment Service Corporation (supra), has taken a view that when a assessee made a bona fide claim coupled with documentary evidence but the same remained inconclusive for want of confirmation from the suppliers and the Assessing Officer has not made further inquiry to verify the correctness of the confirmation, the imposition of penalty is not justifiable. Thus, respectfully following the decisions of the co-ordinate Benches of this Tribunal, we find that the penalty made on estimated disallowance is not sustainable. As a result, the penalty levied is set aside and the appeal of the assessee is allowed.”

5. In the similar circumstances in the assesses own case bearing ITA. No.758/M/2018, the Hon’ble ITAT has deleted the penalty and the relevant finding has been given in para no.4 which is hereby reproduced as under.:-

“4 After hearing rival submissions and perusal of relevant material on record, the undisputed position that emerges is the fact that the penalty has been levied / confirmed merely against estimated disallowances of 12.5%. Nevertheless, the assessee’s claim has been accepted substantially which do not suggest that there was furnishing of inaccurate particulars of income or concealment of income within the



meaning of Section 271(1)(C). Therefore, the factual matrix does not inspire to concur with the stand of first appellate authority. Hence, we delete the impugned penalty.

6. The facts are not distinguishable at this stage. The penalty has been levied by AO on the basis of similar facts and circumstances which has already been adjudicated by Hon'ble ITAT in the assessee's own case for the A.Y.2009-10 & 2010-11(supra). Moreover, the facts are quite similar in which the addition has been sustained @ 12.5% of the bogus purchase. On the basis of similar facts and circumstances Hon'ble High Court of Gujarat in the case of **National Textiles Vs. CIT 2001 164 CTR 2009 (Guj)** has held that the no penalty is liable to be sustainable in the such types of cases. Taking into account all the facts and circumstances mentioned above and by honoring the decision of the co-ordinate benches above, we nowhere found justifiable to sustain the order of the CIT(A) in question, therefore, we set aside the finding of the CIT(A) on this issue and delete the penalty.

6. In the result, the appeal filed by the **assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 19/03/2020

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 19/03/2020

Vijay Pal Sing/Sr. PS

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.5351/M/2018
A.Y. 2011-12

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 / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**