

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1331/MUM/2019
Assessment Year: 2009-10**

The ITO, Ward 3(5), 2 nd Floor, Rani Mansion, Murbad Road, Kalyan West	Vs.	Shri Laxman B Nankar, M/s Pratibha Textile, Industries, 406, Laxmi Sagar, CHS, Tilak Road, Dombivali (East) PAN: ABWPN3608G
(Appellant)		(Respondent)

Revenue by: Shri Michael Jerald (DR)
Assessee by : Shri N.A. Kulkarni (AR)

Date of Hearing: 26/02/2020
Date of Pronouncement: 20/04/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 05.12.2018 passed by the Commissioner of Income Tax (Appeals) -1 (for short 'the CIT (A) Mumbai, for the assessment year 2009-10, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring total income of Rs.5,56,034/-, which was processed u/s 143 of the Act. Subsequently, on the basis of information received from the Sales Tax Deptt. Govt. of Maharashtra to the effect that the assessee had obtained bogus purchases bills from hawala parties amounting to Rs. 2,28,852/- made addition of the said amount to the total income of the assessee and initiated penalty

proceedings u/s 271 (1) (c) of the Act. The AO after hearing the assessee imposed penalty of Rs. 70,715/- u/s 271 (1) (c) for concealing/furnishing inaccurate particulars of its income. In the first appeal, the Ld. CIT (A) deleted the penalty levied by the AO. The revenue is in appeal against the said findings of the Ld. CIT (A).

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

- “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 define 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.*
3. *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 para 10(e) of the said circular. Therefore, the order of the CIT (A) may kindly be vacated and that of the AO may be restored.”*

4. The Ld. Departmental Representative (DR) submitted before us that the Ld. CIT (A) has wrongly deleted the penalty levied by the AO u/s 271 (1) (c) of

the Act. The Ld. DR further submitted that since the assessee has concealed its income by furnished inaccurate particulars of income, the AO has rightly imposed penalty u/s 271 (1) (c) of the Act.

5. On the other hand, the Ld. counsel for the assessee relying on the decision of the Ld. CIT (A) submitted that since the findings of the Ld. CIT (A) are based on the settled principles of law, there is no infirmity in the impugned order to interfere with. The Ld. counsel further submitted that since the addition has been made on estimation basis no penalty can be levied on the basis of the said addition. The Ld. counsel further submitted that since the findings of the Ld. CIT (A) are in accordance with the decision of the Mumbai Tribunal, there is no merit in the revenue's appeal.

6. We have heard the rival submissions of the parties and perused the material on record. The Ld. CIT (A) has deleted the addition holding that addition of income by the AO itself does not make the assessee liable for penalty under section 271 (1) (c) of the Act. In order to impose penalty there must be cogent evidence to establish that the assessee has either concealed its income or furnished inaccurate particulars of its income. The findings of the Ld. CIT (A) read as under:-

“5. I have carefully considered the facts of the case, findings of the AO, submission of the AR of the appellant 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 straightway levied merely because no appeal has 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. 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.

7. 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.”

8. The levy of penalty is merely on disallowance of purchases and not finding of concealment of any particular or *mala-fide* intention to reduce taxable income. Addition made on account of disallowance of purchases as bogus automatically cannot justify the penalty levied u/s 271 (1) (c) of the Act. Accordingly, the penalty of Rs. 70,715/-, imposed u/s 271 (1) (c) of the I.T. Act, by the AO, is hereby deleted and the grounds of appeal, raised as above, are allowed.”

7. We notice that the Ld. CIT(A) has decided the issue in question by following the principles of law laid down by the Hon'ble Supreme Court in the case of *Dilip N. Shroff vs. Jt. CIT*, *CIT vs. Reliance Petroproducts Pvt.*

Ltd., Sir Shadilal Sugar Mills and CIT vs. Manju Cotton and Ginning Factory (supra). The coordinate Benches of the Tribunal have held in so many cases that penalty u/s 271 (1) (c) of the Act cannot be levied on the basis of addition made on estimation basis. Hence, we do not find any infirmity in the findings of the Ld. CIT (A). We accordingly uphold the findings of the Ld. CIT (A) and dismiss the appeal filed by the revenue.

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in on 20th April, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/04/2020

Alindra, PS

आदेश 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

