

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

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

**ITA No. 6608/MUM/2018
Assessment Year: 2009-10**

Jayesh H Shah, 309, Pratik avenue Nehru Road, Ville Parle (E), Mumbai - 400057 PAN: AAFPS5426F	Vs.	The Asst. Commissioner of Income Tax - 25(2), C-10, Pratyakshakar Bhavan, Bandra (E), Mumbai - 400051
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Ms. Somatha Mullamuddi (DR)

Date of Hearing: 25/06/2020
Date of Pronouncement: 26/06/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 10.09.2018 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the. CIT (A) 53, Mumbai, for the assessment year 2009-10, whereby the Ld. CIT(A) has dismissed 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 proprietor of M/s Khushbu Chemical, engaged in the business of photographic chemicals and pharmaceuticals intermediates, filed its return of income for the assessment year under consideration declaring the total income of Rs. 34,65,550/-. The same was processed and assessment order was passed u/s 143 (3) of the Act. Subsequently, on the basis of information received from Sales Tax Department through the office of DGIT (Inv.), Mumbai to the effect that the assessee had obtained accommodation entries from various bogus parties, reopened the assessment u/s 147 of the Act after issuing notice u/s 148. Accordingly, the

AO made addition of Rs. 62,400/- i.e. 25% of the total amount of bogus purchases shown by the assessee. The AO initiated proceedings u/s 271 (1) (c) of the Act and imposed penalty of Rs. 19,500/- under section 271 (1) (c) for furnishing inaccurate particulars of income leading to concealment of income. In the first appeal, the Ld. CIT (A) confirmed the penalty imposed by the AO. Against the said findings, the assessee is in appeal before the Tribunal.

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

1. *“CIT (A) has erred in confirming penalty u/s 271 (1)(c) even though addition is made by estimating gross profit of purchases.*
2. *CIT (A) has erred in upholding penalty when there is no specific charge has been created by the AO.”*

4. This case was fixed for hearing on 25.06.2020. However, on the said date none appeared on behalf of the assessee. We noticed that the assessee has furnished written statement along with the copy of order dated 14.02.2020 passed by the “SMC” Bench vide which the “SMC” Bench, has deleted the entire addition made by the AO on estimation basis. Accordingly, we decided to dispose of the said appeal on the basis of written submission of the assessee after hearing the Departmental Representative (DR). We notice that the “SMC” Bench has deleted the addition on the basis of which the AO passed order imposing penalty u/s 271 (1) (c) of the Act and the Ld. CIT (A) has confirmed the same. The findings of the “SMC” Bench are as under:-

“5. I have heard both the counsel and perused the record. I note that the Assessing Officer has noted that the assessee has engaged into hawala purchases from Dipali Enterprises for an amount of Rs. 21,872/-. Thereafter the Assessing Officer made addition on the basis of non-response from the party alleged to have supplied bogus bills without doubting sales. The Assessing Officer made disallowance of 25% of hawala purchases of Rs. 2,49,600/-. This was also confirmed by learned CIT (A).

6. I find that it is beyond comprehension as to how on a bogus bill of Rs. 21,872/- disallowance can be to be tune of 25% of Rs. 2,49,600/-. In my considered opinion without doubting sales such an addition without application of mined whatsoever is not at all sustainable. Accordingly, I set aside the orders of authorities below and delete the addition.”

5. The Ld. Departmental Representative (DR) fairly admitted that the Tribunal has deleted the addition on the basis of which the penalty under section 271 (1) (c) of the Act has been confirmed by the Ld. CIT (A).

6. Since, the Tribunal has deleted the addition made by the AO u/s 68 of the Act on estimation basis, the impugned order does not survive. We therefore allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT (A). Accordingly, we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act on the assessee.

In the result, appeal filed by the assessee for assessment year 2009-2010 is allowed.

Order pronounced on 26th June, 2020 under Rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 26/06/2020

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai