

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1681/Mum/2019 (Assessment Year 2004-05)

New Life Marketing & Trading Pvt. Ltd. 158/164, Laxmi Bhavan 4 th Floor, Kalbadevi Road Mumbai-400 002. PAN : AAACN1664L (Appellant)	Vs.	ITO-4(3)(1) 6 th Floor Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Pramod Nikalje
Date of Hearing	21.09.2020
Date of Pronouncement	22.09.2020

ORDER

This is an appeal by the assessee wherein the assessee is aggrieved that learned CIT(A) has erred in sustaining the penalty levied under section 271(1)(c) of the I.T. Act amounting to Rs.63,896/- by order dated 5.2.2019.

2. Brief facts of the case are that assessee in this case is engaged in the business of investment in shares and commission agent. During the course of assessment proceedings the Assessing Officer made disallowance of Rs. 22,435/- for expenses on account of purchase. Addition was restricted to Rs. 1,77,242/- by learned CIT(A). Penalty under section 271(1)(c) of the Act amounting to Rs. 63,896/- was also levied.

3. Upon assessee's appeal learned CIT(A) confirmed the penalty despite noting that in assessee's other group concern case, the entire addition was deleted.

4. Against this order the Revenue is in appeal before the ITAT. I have heard learned Departmental Representative and perused the record. I find that the

addition on account of bogus purchase has been done by the Assessing Officer. Penalty has been levied on the entire amount of disallowance despite noting that learned CIT(A) has reduced the disallowance. Moreover, rejection of a claim by the assessee cannot ipso facto lead to the conclusion that penalty u/s. 271(1)(c) of the Act is leviable. This proposition draw support from Hon'ble Supreme Court decision in the case of Reliance Petro Products Pvt. Ltd., (322 ITR 158). Hence, I set aside the order of the authorities below and delete the penalty.

5. In the result, assessee's appeal is allowed.

Order pronounced under Rule 34(4) of the ITAT rules on 22.9.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/09/2020

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS