



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.3296 & 3297/Mum./2019  
(Assessment Year : 2010-11 & 2009-10)

Asstt. Commissioner of Income Tax  
Circle-12(2)(1), Mumbai

..... Appellant

v/s

M/s. Ehara Engineering Pvt. Ltd.  
Gala no.3 & 7, Sant Bhawan  
Sharma Industrial Estate  
Walbhat Road, Goregaon East  
Mumbai 400 063  
PAN - AAACE2667E

..... Respondent

Assessee by : None

Revenue by : Shri Amit Pratap Singh

Date of Hearing - 30.09.2020

Date of Order - 07.10.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

Aforesaid appeals filed by the Revenue arise out of two separate orders of learned Commissioner of Income Tax (Appeals)-20, Mumbai, for the Assessment Years 2010-11 and 2009-10.

2. The Revenue has filed these appeals being aggrieved with the decision of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*").

2. When these appeals were called for hearing, no one was present on behalf of the respondent assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Brief facts which are common in both the appeals are, upon receiving information from the Sales Tax Department, Government of Maharashtra that certain purchases claimed to have been made by the assessee during the relevant assessment years are non-genuine as the concerned selling dealers were identified as hawala operators by the Sales Tax Department, the Assessing Officer re-opened the assessment for the impugned assessment years. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of such purchases. Not being satisfied with the evidences furnished and submissions made by the assessee, the Assessing Officer held that the disputed purchases of ₹ 14,96,886, for the assessment year 2009-10 and ₹ 34,76,696, for the assessment year 2010-11 are non-genuine. However, instead of disallowing entire purchases, the Assessing Officer proceeded to estimate the profit element embedded in such purchases and disallowed 12.5% out of the purchases made in the relevant

assessment years. Accordingly, he added back an amount of ₹ 1,87,110, in assessment year 2009–10 and an amount of ₹ 4,34,587, in assessment year 2010–11. On the basis of such additions, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed orders imposing penalty under section 271(1)(c) of the Act of ₹ 63,600, in assessment year 2009–10 and an amount of ₹ 1,47,716, in assessment year 2010–11 alleging furnishing of inaccurate particulars of income. Against the penalty orders so passed, the assessee preferred appeals before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) relying upon the decision of the Hon'ble P&H High Court in Hari Gopal Singh v/s CIT, 258 ITR 85 (P&H), deleted the penalty imposed in both the assessment years.

5. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, on the basis of some information received from the Sales Tax Department, the Assessing Officer treated certain purchases made by the assessee during the years under consideration to be non-genuine. However, instead of disallowing the entire purchases the Assessing Officer had only added the profit element embedded in such

purchases. The aforesaid action of the Assessing Officer clearly suggests that the assessee, in fact, had made purchases, though, the source of such purchases may not have been established for whatever may be the reason. Therefore, even assuming that the assessee was unable to prove the source of such purchases, what might have escaped assessment is only the profit element embedded in such purchases. For that reason only, the Assessing Officer has estimated the profit element embedded in such purchases @ 12.5% and added back to the income of the assessee. However, the additions of such estimated profit by no means would lead to an inference that the assessee has either furnished inaccurate particulars of income or concealed its income. That being the case, the provisions of section 271(1)(c) of the Act cannot be pressed into action. In view of the aforesaid, we do not find any infirmity in the order of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act in both the assessment years under consideration. Grounds raised by the Revenue are dismissed.

6. In the result, appeals are dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 07.10.2020

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 07.10.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai