

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

I.T.A. No. 393/Mum/2019 (Assessment Year 2010-11)

Mr. Shripal Rashmikant Daftary 5, Rajsneha, S.N. Road Mulund West, Mumbai-400 080. PAN : AAQPD2146N (Appellant)	Vs.	ITO-29(3)(4) Mumbai. (Respondent)
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Assessee by	None
Department by	Shri Kailash Gaikwad
Date of Hearing	13.10.2020
Date of Pronouncement	15.10.2020

O R D E R

This is an appeal by the assessee wherein the assessee is aggrieved that Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has erred in confirming the penalty levied under section 271(1)(c) of the I.T. Act amounting to Rs. 1,93,090/- by order dated 5.12.2018 pertaining to A.Y. 2010-11.

2. Brief facts of the case are that the assessee in this case is engaged in the business of trading in solvents and chemicals. During the course of assessment proceedings the Assessing Officer made disallowance of 12.5% of the purchases at Rs. 6,98,684/-. Penalty under section 271(1)(c) of the I.T. Act amounting to Rs. 1,93,096/- was also levied.

3. Upon assessee's appeal learned CIT(A) confirmed the penalty by observing as under :-

"During the assessment proceedings based on the information received from Sales Tax Department and DGIT(Inv), Mumbai, about bogus purchase bills being obtained from bogus hawala bills providers, the AO after having considered the assessee's submission that all the purchases made through proper channel, payments made to the parties vide banking channels and also after examining copies of ledger accounts as well as purchase bills. The

assessee also stated that the payments were also made by account payee cheque. The whole issue arose since the vendor had not paid VAT. The availability of TIN 8s VAT no. coupled with bank account proved the identity of the supplier beyond doubt. After considering the above submission made by the AR of the appellant, the AO added to the extent of 12.5% being gross profit on the alleged bogus purchases. The appellant in his submissions stated that in order to buy peace and avoid further litigation, accepted the additions made to the extent of 12.5% being gross profit on the alleged bogus purchases. The appellant has also paid the required tax on the same and did not go for appeal on the assessment order. However, the AO levied penalty u/s. 271(l)(c) of the I.T. Act. at Rs. 1,93,090/-.

During the course of penalty proceedings, the appellant argued that the addition made is on adhoc basis and mere disallowance of part expenses should not attract penalty. The AO has also considered various case laws and judgments thereby distinguishing them to the facts of the case and found that the assessee's case is not exactly identical to the facts of various cases and decisions mentioned in the letter dated 27.1.2016 submitted by the AR of the appellant. Thus, the AO have mentioned his penalty order that the assessee has not declared his true income and not furnished accurate particulars of income by indulging in bogus purchases and accepted the addition made of Rs.6,98,684/- being 12.5% of the unproved purchases of Rs. 55,89,475/- and levied the penalty u/s. 271(l)(c) of the I.T.Act.

As the AO has treated Rs.6,98,684/- as additional income concealed by the assessee which has escaped assessment and hence the penalty levied u/s. 271(l)(c) is confirmed after considering various case laws mentioned in his submissions by the AR of the appeal.”

4. Against this order assessee is in appeal before the ITAT.
5. I have heard the learned departmental representative and perused the record. I find the addition on account of bogus purchases has been done on estimated basis. The learned CIT(A) is not correct in confirming the penalty under section 271(1)(c) of the Act in this case. Section 271(1)(c) postulates levy of penalty for furnishing inaccurate or concealment. In this case assessee has submitted all the details. Estimated addition for bogus purchase is the result of non-appearance of the alleged bogus suppliers before the Assessing Officer. Sales have not been doubted. Hence, the assessee cannot be penalized for this. Moreover, I further note that the conduct of the assessee in this case cannot be considered be contumacious to warrant levy of penalty under section. This proposition is supported by the decision of larger Bench of the honourable

Supreme Court in the case of the Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26).

6. Hence in the background of the above discussion and precedent I set aside the order of the authorities below and delete the penalty.

7. In the result appeal filed by the assessee stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 15.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/10/2020

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

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