

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 1766/Mum/2019 (Assessment Year 2009-10)

M/s. Precise Electricals Plot No. A/64, Road No. 21 Wagle Industrial Estate Thane West-400 604. PAN : AAAFP8589K (Appellant)	Vs.	DCIT Circle-3 6 th Floor R.No. 2 Ashar I.T. Park Wagle Estate MIDC, Thane-W 400 604. (Respondent)
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Assessee by	None
Department by	Shri Uodal Raj Singh
Date of Hearing	06.10.2020
Date of Pronouncement	07.10.2020

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee against the order of learned CIT(A) wherein penalty levied of Rs. 30,12,401/- u/s. 271(1)(c) has been confirmed vide dated 5.3.2018 for A.Y. 2009-10.

2. Brief facts of the case leading to the levy of penalty are that the Assessing Officer in these cases made disallowance of 100% on account of bogus purchases. Assessee has supplied the purchase vouchers and the payment where shown to have been made by banking channel. However drawing adverse inference for the non-production of the suppliers the Assessing Officer disallowed 100% of the bogus purchases. However, the Assessing Officer did not doubt the sales. The learned CIT(A) confirmed the addition. The ITAT in appeal, has reduced the addition to 12.5% of the bogus purchases. But penalty amounting to Rs. 30,12,401/- u/s. 271(1)(c) was also levied before the order of ITAT. This penalty was confirmed by learned CIT(A).

3. Against this order the assessee is in appeal before us.

4. We have heard learned Departmental Representative and perused the records. As clear from the facts recorded above, the disallowance has been made on account of the non-production of suppliers before the Assessing Officer. The purchase vouchers were duly produced and the payments were made through banking channel. The sales are not doubted and the ITAT has reduced the disallowance of bogus purchase to 12.5%. Since the penalty was levied at addition of 100% for bogus purchases, the same would no longer survive as the ITAT has reduced the addition to 12.5% of bogus purchases. The quantum of penalty would then automatically be correspondingly reduced. Moreover in the facts and circumstances of the case in our considered opinion assessee cannot at all visited with the rigours of penalty under section 271(1)(c). As a matter of fact on many occasions on similar circumstances in quantum proceedings the disallowance itself has been deleted. In our considered opinion on the facts and circumstances of the case assessee cannot be said to have been guilty of concealment or furnishing of inaccurate particulars of income. In this regard we draw support from the decision of a larger Bench of the honourable Supreme Court in the case of the Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26).where in it was held that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious.

5. In the background of aforesaid discussion and precedent we set aside the orders of authorities below and delete the levy of penalty.

6. In the result assessee's appeal is allowed

Order pronounced under Rule 34(4) of the ITAT Rules on 07.10.2020.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 07/10/2020

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai