

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

I.T.A. No. 3634/Mum/2019 (Assessment Year 2009-10)

ITO 27(1)(4) Room No. 409 4 <sup>th</sup> Floor Tower No. 6 Vashi Railway Station Navi Mumbai-400703.	Vs.	Shri Dhiraj Dharamshi Chhadwa G-505, Vikram Apartment LBS Marg, New Maneklal Estate, Ghatkopar-W Mumbai-400 086.  PAN : ADBPC3088N
(Appellant)		(Respondent)

Assessee by	Written submission
Department by	Shri Jeetendra Kumar
Date of Hearing	20.10.2020
Date of Pronouncement	22.10.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue wherein the revenue is aggrieved that the Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has erred in deleting the penalty levied under section 271(1)(c) of the Income Tax Act amounting to rupees 142,366/- by order dated 7.3.3019 pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee is an individual. During the course of assessment proceedings the Assessing Officer made disallowance of 100% of the purchases amounting to Rs. 21,46,011/-. In appeal learned CIT(A) directed to reduce the disallowance to 16.82% by the average gross profit. Penalty under section 271(1)(c) of the Act amounting to rupees 1,42,366/- was also levied.

3. Upon assessee's appeal learned CIT(appeals) deleted the penalty by concluding as under :-

“Further, in a recent decision of Delhi ITAT in the case of Shruti Fastners Ltd. vs. DCIT (2017) 49 CCH 0183 Del-Trib and ITAT Mumbai in the case of Rakeshkumar M. Gupta vs. ITO(2017) 49 CCH 0066 Mum-Trib, it has been held that where income has been estimated, the appellant cannot be said to have concealed particulars of income or furnished inaccurate particulars of income and therefore, penalty u/s 271(1)(c) was not leviable.

In the background of the aforesaid discussions and respectfully following the precedents, as above, I am of the considered view that the appellant has not concealed the particulars of income and nor has it furnished inaccurate particulars of income, there being are no findings of the AO that the details furnished by the appellant in his return are found to be inaccurate or erroneous or false. Accordingly, I delete the penalty of Rs. 1,42,366/- levied by the Assessing Officer u/s. 271(1)(c) of the Act.”

4. Against this order revenue is in appeal before the ITAT. We have heard the learned departmental representative and perused. We find the addition on account of bogus purchases has been done on estimated basis. The learned CIT(A) is correct in holding that the penalty under section 271(1)(c) of the Act this case is not sustainable. We further note that the conduct of the assessee in this case cannot be considered be contumacious warrant levy of penalty under section 271(1)(c) of the Act.
5. This proposition is supported by the decision of the larger Bench of honourable Supreme Court decision the case of Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26)(SC). Moreover in the written submission by the Id counsel of the assessee it has pointed out that tax effect in this case is below the limit fixed by CBDT vide circular no. 17/2019 dated 8.8.2019.
6. The Ld DR tried to mention that since the addition is based upon information from Sales tax Authority an outside agency the penalty can also be considered to be so based and hence would fall under the exemption carved out in the said CBDT circular. We are not convinced by this argument. Once the revenue concedes that penalty has been levied based upon outside agency information the penalty would have no legs to stand.
7. Be as it may we uphold the order of Ld CIT(A) deleting the penalty.

8. In the result appeal filed by the revenue stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules on 22.10.2020.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/10/2020

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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