

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Pawan Singh (JM)

I.T.A. No. 1055/Mum/2019 (Assessment Year 2010-11)

Principal CIT-9 Room No. 210 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Arco Electro Technologies Pvt. Ltd. Plot No. 123, Road No. 17 MIDC Marol, Andheri East Mumbai-400 093. PAN : AAACA4336L
(Appellant)		(Respondent)

Assessee by	Shri Dharendra M. Shah
Department by	Shri Michael Jerald
Date of Hearing	03.02.2020
Date of Pronouncement	20.4.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against order of learned CIT(A) dated 28.12.2018 and pertains to assessment year 2010-11.

2. The issue raised is that teamed CIT(appeals) erred in deleting the penalty of Rs. 1,15,760/- levied under section 271(1)(c) of the IT Act.

3. Brief facts of the case leading to the levy of penalty are that the disallowance on account of bogus purchases was done by the assessing officer in the course of assessment. The assessing officer has received information from the sales tax Department that assessee has made purchases from alleged bogus suppliers. The total purchases came to Rs. 10,86,158/-

4. The assessing officer issued notice under section 133(6) to these parties. The notice remained responded. The assessee submitted all the necessary documentary evidence for the purchase. The assessing officer had not disputed the sales. He held that assessee has shown gross profit rate of 34.49% for A.Y.

2010-11. Hence he disallowed 34.49% of Rs. 10,86,158/- amounting to Rs. 3,74,616/-. On the addition penalty under section 271(1)(c) was also levied.

5. Upon assessee's appeal learned CIT(A) deleted the addition.

6. Against this order assessee is in appeal before us.

7. We have heard both the Counsel and perused the records. We find assessing officer has not rejected the books of account. He has also not disputed the sales. Honourable jurisdictional High Court in the Nikunj Exemp Enterprises (in writ petition no 2860, order dt. 18.6.2014) has held that no disallowance on account of bogus purchase can be done if sales are not doubted. In this view of the matter the adhoc disallowance made by the assessing officer made on estimate basis cannot lead to an inference that assessee has furnished inaccurate particulars of income or assessee is guilty of concealment of income. In our considered opinion the conduct of the assessee is bonafide and the assessee doesn't deserved to be visited with the rigours of penalty under section 271(1)(c). In this regard we placed reliance upon the decision of honourable Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa (83 ITR 26) for the proposition that the authority may not levy penalty if the conduct of the assessee is not found to be contumacious.

8. In our considered opinion on the facts and circumstances of the case the learned CIT(A) has rightly deleted the penalty. This order doesn't need any interference in our part. Hence we uphold the same.

9. In the result this appeal by the revenue stands dismissed.

Order has been pronounced in the Court on 20.4.2020.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/04/2020

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai