

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1405/MUM/2019
Assessment Year: 2011-12**

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| The ITO Ward-5(3)(1), Room No. 526, 5 th Floor, Aayakar Bhavan, Mumbai - 400020 | Vs. | M/s Rolex Ferromat Pvt. Ltd., 105-107, Raghav Building, V.P. Road, C.P. Tank, Mumbai - 400004 PAN: AAECR3021R |
| (Appellant) | | (Respondent) |

Revenue by : Shri Deepkant Prasad (DR)

Assessee by : Pramita Rathi (DR)

Date of Hearing: 26/10/2020
Date of Pronouncement: 29/10/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 28.12.2018 passed by the Commissioner of Income Tax (Appeals)-10 (for short 'the CIT(A), Mumbai, for the assessment year 2011-12, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the penalty order passed u/s 271 (1)(c) of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, the AO passed the assessment order u/s 143 (3) r.w.s. 147 of the Act after making addition of 12.5% of the bogus purchases shown by the assessee. In the first appeal, the Ld.CIT (A) sustained the addition made by the AO. Accordingly, AO initiated proceedings u/s 271 (1) (c) of the Act and imposed penalty of Rs. 2,95,587/-. The assessee challenged the penalty order passed by the AO before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee deleted the penalty by following the various decisions of the ITAT.

Against the said findings of the Ld. CIT (A), the revenue is in appeal before this Tribunal.

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the penalty levied on disallowance made on account of bogus purchases without appreciating that the assessee has failed to establish genuineness of the purchases and therefore it is clear case of furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the I.T. Act, 1961.”

4. Before us, the Ld. DR submitted that since the assessee failed to establish the genuineness of the purchases in question by adducing cogent and convincing evidence, AO had rightly made addition of the total amount of bogus purchases to the income of the assessee. Even in the first appeal, the Ld. CIT (A) sustained the addition of 12.5% made by the AO. Under these circumstances, the Ld. CIT (A) ought to have confirmed the penalty levied by the AO u/s 271 (1) (c) of the Act.

5. On the other hand, the Ld. counsel for the assessee supporting the findings of the Ld. CIT (A) submitted that since the Ld. CIT (A) sustained the addition of 12.5% of the total amount of bogus purchases on estimate basis, penalty u/s 271 (1) (c) of the Act levied by the AO is not sustainable. The Ld. counsel further pointed out that the findings of the Ld. CIT (A) are based on the various decisions of the ITAT, therefore, there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

6. We have heard the rival submissions of the parties and gone through the material on record including the cases relied upon by the authorities below. The Ld. CIT (A) has deleted the penalty, levied u/s 271 (1) (c) of the Act, holding as under:-

“8.14 In the present case, the assessments are based on the information received from DGIT(Inv.), Mumbai that the appellant has made bogus purchases I taken accommodation entries from certain

hawala operators who have indulged in issuing bogus sale/purchase bills without actual delivery of goods. The appellant had submitted various evidence in the form of purchase bill and bank statement highlighting payments made for purchase however, the AO has rejected the claim of the appellant for the reason that the suppliers could not be traced at the given addresses and the appellant could not produce the aforesaid parties before the AO for verification. There may be good reason for making addition in quantum; however, for the purpose of levy of penalty there must be some corroborative material on record that the assessee has concealed particulars of income or has filed inaccurate particulars of income Apart from the fact that the Assessing Officer disbelieved the appellant's explanation for the reason the parties who have, given purchase invoices to the appellant were not traceable at the addresses given in the invoices there is no other material to show that the particulars disclosed by the appellant are not truthful. The appellant was in possession of vital evidence to prima fade substantiate its purchases to some extent, the AO has acknowledged that the material stated to be purchased from the alleged bogus parties has been sold. Therefore, merely because the suppliers could not be traced at the given addresses could not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the appellant. The appellant has offered an explanation, which could not be termed as not bona fide and the same was coupled with documentary evidence however the same remained inconclusive for want of confirmation from suppliers. In this regard, it may be relevant to refer to the decision of the Hon'ble ITAT, Mumbai in the case of DCIT 24(2), Mumbai vs. Unisynth Chemicals, Mumbai in ITA No. 5967/Mum/2014 dated 11/01/2017 wherein under identical circumstances, the Hon'ble ITAT has held as under:

On an appreciation of the material on record we are inclined to concur with the view of the CIT(A) that the explanation put-forth by the assessee in the penalty proceedings was a plausible one, in as much as the circumstances on which the additional income was offered was because the disputed parties with whom these transactions were made were non-cooperative and the assessee having no control over those parties was, therefore, not able to substantiate its claim with necessary material evidence.

8.15 Thus, it can only be concluded in this case that that except for rejection of the explanation furnished by the assessee, there is no material to sustain the plea of inaccurate particulars of

income.

8.16 Further, the addition has been made purely on estimate basis. Under identical circumstances, the Hon'ble ITAT Mumbai in the case of Shri Deepak Gogri V. ITO 25(3)(2) in ITA No. 1396/Mum/2017 dated 23/11/2017, has held that there is no concealment of income or furnishing of inaccurate particulars of income as the profit element was determined by way of adhoc estimation.

8.17 For the above reasons, in my consider opinion, the levy of penalty is entirely uncalled for. The same is, accordingly, deleted.”

7. As pointed out by the Ld. counsel for the assessee, the Ld. CIT (A) has deleted the penalty levied u/s 271 (1) (c) of the Act, by following the decisions of the coordinate Benches wherein the Tribunal has held that where the addition is made on estimate basis, penalty u/s 271 (1) (c) cannot be imposed. Since, the findings of the Ld. CIT (A) are based on the decisions of the coordinate Benches rendered in the cases discussed by the Ld. CIT(A), we do not find any reason to interfere with the findings of the Ld. CIT (A). We accordingly uphold the decision of the Ld. CIT (A) and dismiss the appeal filed by the revenue. Accordingly, we direct the AO to delete the penalty levied under section 271 (1) (c) of the Act.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced on 29th October, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/10/2020

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**