

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NO. 2749/MUM/2019 : **A.Y : 2009-10**

Samir H. Doshi
24, Ramsharan, 3rd Floor,
Plot No. 45, Sion (West),
Mumbai 400 022.

Vs. Income Tax Officer – 26(3)(1),
Mumbai. (Respondent)

PAN : AAQPD2202F (Appellant)

Assessee by : **Shri Narayan Atal**

Revenue by : **Ms. Smita Verma**

Date of Hearing : **09/11/2020**

Date of Pronouncement : **17/11/2020**

ORDER

This is an appeal by the assessee, wherein it is urged that the learned Commissioner of Income Tax (Appeals)-38 (in short 'learned CIT(A)') has erred in confirming the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') amounting to Rs.6,60,000/- by order dated 29.09.2015 pertaining to Assessment Year 2009-10.

2. The brief facts of the case are that assessee in this case is engaged in the business as reseller and supplier of iron and steel, hardware, etc. During the course of assessment proceedings, the Assessing Officer made disallowance of 12.5% of the purchases resulting in addition of Rs.18,91,383/-. Penalty under Section 271(1)(c) of the Act amounting to Rs.6,60,000/- was also levied.

3. Upon assessee's appeal, learned CIT(A) upheld the penalty by *inter alia* observing that the Assessing Officer was wrong in computing the amount of

addition, which should have been Rs.9,45,691/-. Hence, he directed the Assessing Officer to recompute the penalty. The resultant penalty would only be Rs.3,30,000/-.

4. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the material on record. I find the addition on account of bogus purchases has been done on estimated basis. Since all the details were furnished, assessee cannot be held guilty of furnishing inaccurate particulars of income or for concealment of income. I further note that there is lack of application of mind by the Assessing Officer in making the addition. While stating that he is disallowing 12.5% of bogus purchases of Rs.75,65,531/-, he has arrived at a figure of Rs.18,91,383/- with reference to which penalty is levied. The learned CIT(A) is wrong in holding that penalty under Section 271(1)(c) in this case is sustainable. I further note that the conduct of the assessee in this case cannot be considered to be contumacious to warrant levy of penalty under Section 271(1)(c) of the Act.

5. This proposition is supported by the decision of Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. vs State of Orissa, 83 ITR 26 (SC)*.

6. In the result, appeal filed by the assessee stands allowed.

Order pronounced under Rule 34(4) of ITAT Rules on 17th November, 2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 17th November, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai