

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

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1522/MUM/2018  
Assessment Year: 2009-10**

Sandeep C. Shah, 52, Rokadiya Niketan, Parsi Panchayat Road, Opp., Sona Udyog, Andheri (East), Mumbai - 400069 PAN: AMTPS9859G	<b>Vs.</b>	The Commissioner of Income Tax -37, BKC C-13, 1 <sup>st</sup> Floor, Room No. 112, Mumbai - 400051
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Shri T.S. Khalsa (DR)

Date of Hearing: 07/12/2020  
Date of Pronouncement: 08/12/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 07.03.2017 passed by the Commissioner of Income Tax (Appeals)-37 (for short 'the CIT(A), Mumbai, for the assessment year 2009-10, whereby the Ld. CIT(A) has dismissed 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. Brief facts of the case are that the assessee engaged in the business of Trading in steel, filed its return of income for the assessment year under consideration declaring total income of Rs. 1,69,432/-. The AO passed assessment order u/s 144 of the Act determining the total income at Rs. 12,31,110/- after making addition of 2.50% of the sales value on estimation basis. Accordingly, AO initiated proceedings u/s 271 (1) (c) of the Act and levied penalty of Rs. 3,10,819/- for concealment of particulars of income. The

assessee challenged the penalty order before the Ld. CIT (A). The Ld. CIT (A) dismissed the appeal of the assessee and confirmed the penalty levied by the AO. The assessee is in appeal before this Tribunal against the said order.

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

*“Learned CIT (A) erred in confirming the Penalty imposed by Assessing Officer of Rs. 3,10,820/- u/s 271 (1) (c) of the Income Tax Act, 1961, where the Assessing Officer has assessed the Income on estimated basis.”*

4. This appeal was fixed for hearing on 07.12.2020. However, when the cases were called out for hearing, none appeared on behalf of the assessee. Hence, we decided to dispose of this appeal on the basis of material on record after hearing the Ld. Departmental Representative (DR). Accordingly, we asked the Ld. DR to present the case of the department.

5. The Ld. DR supporting the order passed by the Ld. CIT (A) submitted that since the assessee had concealed the particulars of its income, the AO made addition of 2.50% of the total amount of sales declared by the assessee. The Ld. DR further pointed out that the assessee did not challenge the addition made by the AO and accordingly admitted that it had concealed its particulars of income. Hence the authorities below have rightly levied /confirmed penalty u/s 271 (1) (c) of the Act. Therefore, there is no infirmity in the order passed by the Ld. CIT(A).

6. We have perused the material on record in the light of the submissions made by the Ld. DR. We notice that the AO has made addition of 2.50% of the total amount of sales on *ad hoc* basis by estimating the profit from the said transaction. In the case of *Sh. Ajay Loknath Lohia vs. ITO*, the coordinate Bench of the ITAT has deleted the penalty levied u/s 271(1)(c) of the Act, on the basis of addition made on estimation basis, holding that mere disallowance of purchases on *ad hoc* basis does not amount to furnishing inaccurate

particulars of income within the meaning of section 271 (1) (c) of the Act. The relevant para of the order reads as under:

“8. Having heard both the sides, we find merit in the arguments of the assessee for the reason that although the AO has estimated 25% gross profit on alleged bogus purchases, never made by observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The AO never disbelieved information filed by the assessee, but he proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on *ad hoc* basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, we are of the considered view that mere disallowance of purchases on *ad hoc* basis does not tantamount to willful furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the Income Tax Act, 1961. Hence, we are of the considered view that the AO was erred in levying penalty u/s 271 (1) (c) of the Act. Accordingly we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act.”

7. In the present case, the AO has levied penalty u/s 271 (1) (c) of the Act on the basis of *ad hoc* addition made on estimation basis. As per the settled law, in order to hold the assessee liable u/s 271 (1) (c) of the Act, there must be a clear finding based on material on record. Mere addition does not *ipso facto* make the assessee liable for penalty. The coordinate Bench has decided the similar issue in the case of *Sh. Ajay Loknath Lohia vs. ITO (supra)*, in favour of the assessee. Hence, respectfully following principle laid down by the coordinate Bench in the aforesaid case, we allow the appeal of the assessee and set aside the findings of the Ld. CIT (A). Accordingly, we direct the AO to delete the penalty levied/s 271(1)(c) of the Act.

In the result, appeal filed by the assessee for assessment year 2009-2010 is allowed.

Order pronounced on 8<sup>th</sup> December, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

*Sd/-*  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 08/12/2020

*Alindra, PS*

**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