

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No.5032/Mum/2019
(Assessment Year: 2009-10)

Income Tax Officer-25(1)(5) Room No. 229, 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	Vs.	M/s. Tushar Engineering Industries 9, Apurva Ind. Estate, Makvana Road, Andheri (E), Mumbai-400 059
PAN/GIR No. AABFT 0541 N		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Vijay Kumar Menon
Respondent by	:	None
Date of Hearing	:	06.01.2021
Date of Pronouncement	:	06.01.2021

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue against the order of learned CIT(A)-37, Mumbai dated 29.05.2019, wherein penalty levied u/s. 271(1)(c) has been deleted for the Assessment Year 2009-10 for an amount of Rs.27,090/-.

2. Brief facts of the case leading to the levy of penalty are that the assessing officer in this case made disallowance of 100% on account of bogus purchase of Rs.7,01,341/-. The assessee has supplied the purchase vouchers and the payment where shown to have been made by banking channel. However, drawing adverse inference for the non production of the suppliers, the assessing officer disallowed 100% of the bogus purchases. However, the assessing officer did not doubt the sales. The learned CIT-A confirmed the addition. However, ITAT restricted the same to 12.5%. Penalty under section 271(1)(c) was also levied for an amount of Rs.27,090/-.

3. Against this order, the Revenue is in appeal before us.

4. We have heard both the counsel and perused the records. As clear from the facts recorded above, the disallowance has been made on an estimated basis on account of the

non-production of suppliers before the assessing officer. The purchase vouchers were duly produced and the payments were through banking channel. The sales are not doubted. In these backgrounds, in our considered opinion, the assessee cannot be visited with the rigours of penalty u/s. 271(1)(c). As a matter of fact, on many occasions, on similar circumstances in quantum proceedings the disallowance itself has been deleted. In our considered opinion, on the facts and circumstances of the case, the assessee cannot be said to have been guilty of concealment or furnishing of inaccurate particulars of income. In this regard, we draw support from the decision of a larger bench of the honourable Supreme Court in the case of the *M/s Hindustan Steel Ltd. vs State of Orissa* (1972) 83 ITR 26(SC), wherein it was held that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious.

5. In the background of aforesaid discussion and precedent, we set aside the orders of authorities below and delete the levy of penalty.

6. In the result, the Revenue's appeal is dismissed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 06.01.2021

Sd/-

(Ram Lal Negi)
Judicial Member

Mumbai; Dated : 06.01.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Shamim Yahya)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai