

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

**I.T.A. No.4931/Mum/2019
(Assessment year : 2009-10)**

Deputy Commissioner of Income-tax, Circle-3, Thane	vs	Shri Nilesh Ramesh Bhure D11, Plot No.52, Virangula CHS Savarkar Nagar, Thane (W)-400 606 PAN : AGVPB5383L
(APPELLANT)		(RESPONDENT)

Appellant by	Smt. Smita Verma (DR)
Respondent by	None

Date of hearing	03-02-2021
Date of Pronouncement	25/02/2021

ORDER

This is an appeal by the revenue against order dated 06-05-2019 of learned Commissioner of Income-tax (Appeals)-2, Thane deleting the penalty imposed under section 271(1)(c) of the Act for the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Considering the nature of dispute, I proceed to dispose of the appeal ex parte qua the assessee after hearing the learned Departmental Representative and on the basis of materials on record.

3. Briefly the facts are, the assessee is an individual and is engaged in electrical contract work. For the assessment year under dispute, assessee filed his return of income on 25-09-2010 declaring total income of Rs.26,69,918/-. On the basis of information received from Sales-tax Department, Government of Maharashtra, that the assessee is a beneficiary of accommodation bills for purchases worth Rs.19,04,514/-, the Assessing Officer reopened the assessment u/s 147 of the Act and ultimately completed the assessment by disallowing entire purchases alleged to be non genuine. Addition so made was also upheld by learned Commissioner (Appeals). On the basis of the addition so made, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs.6,47,343/- alleging concealment of income. Against the penalty order so passed, assessee preferred appeal before learned Commissioner (Appeals). After considering the submissions of the assessee and having found that the Tribunal, while deciding assessee's appeal challenging the addition, has restricted the disallowance to 20% of the alleged non genuine purchases, deleted the penalty imposed under section 271(1)(c) of the Act.

4. Heard the learned Departmental Representative and perused the materials on record. It is evident, the basis for disallowance of certain purchases made by the assessee is the information received from sales-tax department that the persons from whom the assessee claimed to have purchased the goods are providing accommodation bills. On the basis of such information, the Assessing Officer has added back the alleged non genuine purchases amounting to Rs.19,04,514/-. Further, on the basis of the aforesaid addition, penalty under section 271(1)(c) of the Act has been imposed alleging concealment of income.

However, it is a fact on record that while deciding assessee's appeal contesting the addition made on account of alleged non genuine purchases, the Tribunal having found that the assessee had actually purchased goods during the year; but was unable to prove the exact source of purchases, had restricted the addition to 20% of the alleged non genuine purchases while deciding the appeal in ITA No.1078/Mum/2016 dated 12-07-2017. Thus, the disallowance at 20% of the alleged non genuine purchases has been made on entertaining doubt that the assessee might have suppressed a part of its profit by purchasing goods from unverified sources. This certainly cannot lead to concealment of income. Therefore, in my considered opinion, learned Commissioner (Appeals) was correct in deleting the penalty imposed under section 271(1)(c) of the Act. Grounds are dismissed.

5. In the result, appeal is dismissed.

Order pronounced in the Open Court on this 25/02/2021.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai, Dated : 25/ 02/2021.
Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

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By order

I.T.A.T., Mumbai.

