

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA Nos.5481, 5482 & 5635/MUM/2019
(Assessment Years: 2009-10 to 2011-12)**

Anil Bajaria
197/2, Gujarat Society
Sion (West),
Mumbai – 400 022

ACIT-26(1)
Vs. Kautilya Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai - 400051

PAN No. AABPB2538B

(Assessee)

(Revenue)

Assessee by : Ms. Shreya Doshi, A.R
Revenue by : Shri Brajendra Kumar, D.R

Date of Hearing : 02/03/2021
Date of pronouncement : 05/03/2021

ORDER

PER RAVISH SOOD, J.M:

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-38, Mumbai, dated 30.05.2019, which in turn arises from the respective orders passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12. As common issues are involved in the captioned appeals, the same, thus, are being taken up and disposed off by way of a consolidated order. We shall first take up the appeal of the assessee for A.Y. 2009-10 wherein the impugned order has been assailed on the following grounds of appeal before us:

- "1. The Assessing Officer has not specified the charge under which penalty u/s 271(1)(c) is initiated and levied i.e. whether the penalty is initiated and levied for furnishing inaccurate particulars of income or concealment of income.
2. The A.O. had made addition at the rate of 100% of the value of alleged bogus purchases. The CIT(A) had reduced addition on account of alleged bogus purchases at the rate 12.5%. The

Income Tax Department has no positive concrete evidences of concealment. Merely on the basis of estimation of income penalty u/s 271(1)(c) cannot be levied and same be deleted.

3. On the facts and circumstances of case and in law the penalty levied under Section 271(1)(c) Rs.83,358/-be deleted.
4. The assessee craves, leave to add, delete or modify any of the Ground of appeal.”

2. Briefly stated, the assessee who is engaged in the business of trading in chemicals had e-filed his return of income for A.Y.2009-10 on 26.09.2009, declaring a total income of Rs.63,94,050/-. Original assessment was initially framed by the A.O vide his order passed under Sec. 143(3), dated 23.12.2011, determining the total income of the assessee at Rs.46,50,640/- Subsequently, on the basis of information received from the Sales tax department, Maharashtra, that the assessee as a beneficiary had obtained bogus purchase bills from certain hawala dealers, his case was reopened by the A.O under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from the following three tainted parties:

Sr. No.	Name of the Parties	TIN	Amount
1.	Yash Enterprises	27340554213V	Rs.7,33,824/-
2.	Namrata Trading Co.	27500564019V	Rs.7,48,410/-
3.	Vijay Barrel Co.	27210278077V	Rs.4,79,700/-
		Total	Rs.19,61,934/-

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions on the basis of supporting documentary evidence to the satisfaction of the A.O, the latter therein added/disallowed the entire value of the impugned purchases of Rs.19,61,934/-. After inter alia making the aforesaid addition of bogus purchases, the A.O, vide his order passed under Sec. 143(3) r.w.s 147, dated 27.03.2014 assessed the income of the assessee at Rs.88,62,570/-. At the time of culminating the assessment the A.O also initiated penalty proceedings under Sec. 271(1)(c) r.w.s 274 of the Act for furnishing inaccurate particulars of income and concealment of income. ‘Show cause’ notice (SCN), dated 27.03.2014 was issued to the assessee therein calling upon him to explain as to why penalty under the aforesaid statutory provision may not be imposed on him.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). Insofar the addition made by the A.O towards bogus purchases was concerned, the CIT(A) observed that

the A.O had while framing the assessment not rejected the books of accounts of the assessee. Also, it was noticed by the CIT(A) that the A.O had not placed on record any material which would irrefutably support his claim that the assessee had made bogus purchases. Apart from that, the CIT(A) observed that the A.O had also failed to establish any nexus between the payments made by the assessee to the aforesaid supplier parties and routing of the said funds back to the pocket of the assessee. In fact, it was observed by the CIT(A) that the standalone basis for treating the impugned purchases as bogus was the information that was received by the A.O from the sales tax authorities. At the same time, it was observed by the CIT(A) that the A.O had neither doubted the sales corresponding to the impugned purchases nor raised any doubt as regards the quantitative tally of stock that was furnished by the assessee to him. In the backdrop of the aforesaid facts, the CIT(A) was of the view that the assessee had purchased the goods in question not from the aforementioned hawala parties but from the open/grey market. Backed by his aforesaid conviction, the CIT(A) restricted the addition to the extent of 12.5% of the aggregate value of the impugned purchases. Resultantly, the addition to the extent of Rs.2,45,241/- (12.5% of Rs.19,61,934/-) was sustained by the CIT(A).

5. After the order of the CIT(A), the A.O called upon the assessee to explain as to why the penalty under Sec. 271(1)(c) w.r.t the addition made towards the value of the impugned bogus purchases of Rs.2,45,241/- i.e to the extent sustained by the CIT(A) may not be imposed on him. As the reply filed by the assessee did not find favour with the A.O therefore, he imposed penalty under Sec. 271(1)(c) of Rs.83,358/-, vide his order dated 15.03.2018.

6. Aggrieved, the assessee assailed the order passed by the A.O under Sec. 271(1)(c) before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee dismissed the appeal.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, in the case before us the A.O had stamped the purchases aggregating to Rs.19,61,934/- that were claimed by the assessee to have been made from the aforementioned 3 parties, as bogus, for the reason, that

the assessee had failed to prove the authenticity of the purchase transactions on the basis of clinching documentary evidence to the satisfaction of the A.O. In other words, the A.O had declined to accept the authenticity of the purchase transactions under consideration, for the reason that the documentary evidence produced by the assessee did not substantiate the authenticity of the same to the hilt. We have deliberated at length on the issue under consideration and find that the addition made by the A.O is merely backed by an unproved claim of the assessee, and not a claim which was disproved to the hilt on the basis of irrefutable documentary evidence by the revenue. In the backdrop of the aforesaid facts, it can safely be concluded that though the unproved purchases would justify an addition in the hands of the assessee however, merely on the said standalone basis no penalty u/s 271(1)(c) could have been validly imposed. We find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Upendra V. Mithani (ITA (L) No. 1860 of 2009)**, dated **05.08.2009**, wherein it was observed as under:-

“The issue involved in the appeal revolves around deletion of penalty under Section 271(1)(c) of the I.T. Act. The Tribunal has concurred with the view taken by the Commissioner of Income Tax (A). The Commissioner of Income Tax (A) has rightly taken a view that no penalty can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. If the assessee gives an explanation which is unproved but not disproved, i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false. The view taken by the Tribunal is a reasonable and possible view. The appeal is without any substance. The same is dismissed in limine with no order as to costs.”

Admittedly, the assessee in the case before us had failed to substantiate the genuineness and veracity of the purchases claimed by him to have been made from the aforementioned parties by placing on record the documentary evidence as was called for by the A.O. But then, as it is a matter of fact borne from the records that the assessee had evidenced the veracity of the impugned purchase transactions by furnishing certain documents viz. purchase bills, ledger accounts of parties, bank statements etc, the authenticity of which had neither been dislodged nor disproved by the lower authorities therefore, the same in itself would suffice to take the case of the assessee beyond the realm of the penal provisions contemplated under Section 271(1)(c). Our aforesaid view is fortified by the order of the Hon'ble Supreme Court in **CIT-2 Lucknow Vs. U.P State Bridge Corporation Ltd. (SLP) (Civil) (2018) 97 Taxman.com 279 (SC)**, wherein the Hon'ble Apex Court while upholding the order of the Hon'ble High Court of Allahabad had observed, that where a claim of expenditure is neither found inaccurate nor

could be viewed as concealment of income on the part of the assessee, then merely because the said claim was not accepted or acceptable to the revenue would not by itself attract penalty under Sec.271(1)(c). Now, in the case before us, as the revenue had failed to disprove to the hilt on the basis of clinching documentary evidence the authenticity of the claim of the assessee of having made purchases from the aforementioned parties, therefore, merely on the basis of the unproved claim of purchases no penalty under Sec. 271(1)(c) could have been validly imposed on the assessee. In fact, the restriction of the disallowance of entire purchases made by the CIT(A) to 12.5% of the aggregate value of such purchases speaks for itself that the disallowance sustained in the hands of the assessee is merely backed by a process of estimation and not based on any concrete evidence. Accordingly, as in the case before us no clinching material had been brought on record by the revenue which could disprove the authenticity of the purchases claimed by the assessee to have been made from the aforementioned parties thus, no penalty under Sec.271(1)(c) could have validly been imposed upon him. We thus not being able to persuade ourselves to subscribe to the observations of the lower authorities therein vacate the penalty of Rs.83,358/- imposed by the A.O under Sec. 271(1)(c).

9. Accordingly, the order of the CIT(A) upholding the penalty imposed by the A.O under Sec. 271(1)(c) is vacated.

10. Resultantly, the appeal filed by the assessee is allowed.

ITA Nos.5482 & 5635/MUM/2019
(Assessment Years: 2010-11 & 2011-12)

11. As the facts and the issue involved in the aforementioned appeals in A.Y. 2010-11 i.e ITA No. 5482/Mum/2019 and A.Y. 2011-12 in ITA No. 5635/Mum/2019, remains the same as was there before us in the captioned appeal of the assessee for A.Y. 2009-10 in ITA No. 5481/Mum/2019 thus, our order therein passed shall apply *mutatis mutandis* for the purpose of the disposal of the present appeals. Accordingly, the respective orders of the CIT(A) sustaining the penalty imposed in the captioned years, viz. A.Y.2010-11 & A.Y. 2011-12 are set aside and the penalty imposed by the A.O under Sec. 271(1)(c) for both the aforementioned two years is herein quashed.

12. The appeals of the assessee are allowed.

13. Resultantly, the appeals of the assessee for A.Y. 2009-10 to 2011-12 i.e ITA Nos.5481, 5482 & 5635/MUM/2019 are allowed.

Order pronounced in the open court on 05.03.2021

Sd/-
Rajesh Kumar
(ACCOUNTANT MEMBER)

Mumbai, Date: 05.03.2021
PS: Rohit

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Copy of the Order forwarded to :

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

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai