

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

ITA No. 4918/Mum/2019
(Assessment Year: 2012-13)

Income Tax Officer-25(3)(1) Room No. 233, 2 nd Floor, Kautilya Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	Vs.	M/s. Mamta Jewellers Shop No.5 & 6, Unique Apartment, Vile Parle (W), Mumbai-400 056
PAN/GIR No. AAIFM 2236 J		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Bharat Andhle
Respondent by	:	Ms. Dinkle Hariya

Date of Hearing	:	09.03.2021
Date of Pronouncement	:	09.03.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-37, Mumbai ('Id.CIT(A) for short) dated 29.05.2019 and pertains to the assessment year (A.Y.) 2012-13, wherein following penalty levied u/s.271(1)(c) has been confirmed as under:

Assessment year	Amount of penalty
2012-13	Rs.26,379/-

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 purchases. 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 A.O. disallowed 100% of the bogus purchases. However, the A.O. did not doubt the sales. The Id. CIT(A) reduced the addition to 3% of purchase. Penalty u/s. 271(1)(c) was also levied. The Id. CIT(A) deleted the penalty by holding as under:

I have perused the available material on the issue and also gone through the various cases cited by the counsel of the assessee and the ratios of which further substantiate the settled legal position pertaining to levy of penalty is outlined below :

(a) The penalty proceedings are independent of assessment proceedings. Before levy of penalty under Section 271(1)(c), the AO has to establish that there was concealment or furnishing of inaccurate particulars of income on the part of the assessee.

(b) It is necessary to establish conscious concealment for levy of penalty under Section

(c) Penalty cannot be levied simply because addition is sustained in quantum, proceedings. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false, does not necessarily give rise to the inference that the disputed amount represents income of the assessee.

(d) Before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and the assessee and has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars;

(e) If the books of account of the assessee are rejected and trading addition is sustained by estimating net profit, it cannot be presumed that the assessee has concealed income so as to attract the provisions of Section 271(1)(c).

It is observed that the impugned addition was made by the AO only because of lack of evidence to establish the purchase. The addition has been made in this case merely on account of the assessee's failure to establish the identity of the supplier. As such considering all the facts and circumstances of the case, in entirety, and the well-settled position of law arising out of the decisions cited above, I am of the opinion that the disputed amount cannot be considered as assessee's concealed income so as to attract the provisions of Section 271(1)(c). Accordingly, the impugned order of the AO levying the penalty is cancelled and this ground is allowed.

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

4. We have heard both the parties 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. In this background, in our considered opinion, the assessee cannot be visited with the rigours of penalty u/s. 271(1)(c) of the Act. 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 Hon'ble Supreme Court comprising of three of their Lordships in the case of *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. We further note that tax effect in this case is below the limit fixed by CBDT for filing appeals before ITAT. The Revenue has tried to make out a case that since the addition was made pursuant to information from Sales Tax Department, this penalty appeal falls in the exception carved out in the CBDT circular regarding appeals arising out of additions made pursuant to information from outside agencies. We are of the opinion that this plea is not tenable inasmuch as once Revenue accepts that penalty is levied on outside agency information, the penalty levied will have no legs to stand. In the background of aforesaid discussion and precedent, we uphold the order's of Id. CIT(A) and delete the levy of penalty.

6. In the result, the Revenues '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 09.03.2021.

Sd/-

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 09.03.2021
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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai