

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2755/M/2019
Assessment Year: 2011-12**

DCIT 7(3)(1), Room No.142G, First Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Parco Engineers (M) Pvt. Ltd., 308, 3 rd Floor, Reena Complex, Nathani Road, Vidyavihar (W), Mumbai - 400086 PAN: AACCP3024G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Paresh D. Shah, A.R.
Revenue by : Ms. Shreekala pardeshi, D.R.

Date of Hearing : 03.11.2020
Date of Pronouncement : 14.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 04.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The only issue raised by the Revenue is against the deletion of penalty by Ld. CIT(A) of Rs.89,965/- as levied by the AO under section 271(1)(c) of the Act.

3. The facts in brief are that the assessment in this case was framed under section 143(3) read with section 147 of the Act

vide order dated 02.12.2016 wherein an addition of Rs.2,64,682/- was made by the AO @ 2.61% of alleged bogus purchases of Rs.1,01,41,060/-. Pertinent to state that the case was reopened by the AO on the basis of information received from Sales Tax Department, Government of Maharashtra that assessee has taken bogus purchase bills to the tune of Rs.1,01,41,060/- and hence this addition by the AO.

4. The assessee did not challenge the quantum addition because of the smallness of the amount involved. The AO, however, came to conclusion that the assessee has furnished inaccurate particulars of income and thus levy of penalty of Rs.89,965/- being 100% of the tax sought to be evaded for furnishing of inaccurate particulars of income vide order dated 02.12.2016 after rejecting the contentions of the assessee that no penalty is leviable where the income is estimated on adhoc basis.

5. In the appellate proceedings, the Ld. CIT(A) deleted the penalty by relying on the decisions of the coordinate benches of Tribunal, Mumbai benches in the cases of Mrs. Kalpana D. Pandya vs. ITO-23(2)(4) in ITA No.7693/M/2012 dated 25.10.2017, ITA No.5243, 5998 & 5999/M/2012 in the case of ITO 8(1)-3 Vs. M/s. ETCO Telecom Ltd. dated 17.12.2014 and ACIT vs. M/s. Balaji Construction in ITA No.217/M/2015.

6. After hearing both the parties and going through the material on record, we note that in this case the addition of Rs.2,64,682/- was made for alleged bogus purchases being

2.61% of Rs.1,01,41,060/-. The assessee was not in appeal against the quantum proceedings. Thus the AO levied the penalty for inaccurate particulars of income of Rs.89,965/-. We have carefully perused the order of Ld. CIT(A) and observe that ld. CIT(A) has, after relying on various decisions of ITAT, deleted the penalty by holding that non protesting the quantum addition would not automatically lead to the conclusion that assessee has filed inaccurate particulars of income or concealed its income. Similarly, Ld. CIT(A) has also opined that no penalty is leviable in case of estimation of income by the AO. In the present case the assessee has fully disclosed all the details of purchases in return of income which is only on the basis of information from the Sales Tax Wing of Government of Maharashtra and estimated addition equal to 2.61% of the total purchases was made to the total income of the assessee. In our opinion, the order of Ld. CIT(A) is very reasoned order passed after taking into account the ratio laid down by the various judicial forum on this issue. Accordingly, we are of the view that no penalty is leviable on estimation of income.

7. Accordingly, appeal of the Revenue is dismissed.

Order pronounced in the open court on 14.12.2020.

Sd/-
(Mahavir Singh)
VICE PRESIDENT

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 14.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.