

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 5907/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 5908/Mum/2019 (Assessment Year 2011-12)

Anis Ahmed Abdul Rashid Siddiqui Prop. of Himalaya Trading Corporation, C/o. M/s. N.S. Virani & Co., H-17, Everest Building 9 th Floor, Opp. Tardeo Bus Depot, Mumbai-400034. PAN : AACPS5488E (Appellant)	Vs.	ITO-26(1)(1)(1) Bandra Kurla Complex Bandra- East Mumbai-400 051. (Respondent)
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Assessee by	None
Department by	Shri Ajay Pratap Singh
Date of Hearing	31.03.2021
Date of Pronouncement	06.04.2021

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against the respective orders of learned CIT(A), wherein following penalty levied under section 271(1)(c) of the I.T. Act has been sustained :-

Assessment year	amount of penalty
2010-11	Rs. 3,23,383/-
2011-12	Rs. 1,100,322/-

2. Brief facts of the case leading to the levy of penalty are that the assessing officer in these cases made disallowance of 15% on account of bogus purchases. He reduced the gross profit already shown in this regard. Assessee has supplied the purchase vouchers and the payment where shown to have been made by banking channel. However drawing adverse inference for the nonproduction of the suppliers the assessing officer made estimated disallowance. However the assessing officer did not doubt the sales.

3. Upon the aforesaid additions penalty under section 271(1)(c) of the Act has been levied and confirmed by learned CIT(A).
4. Against the above order assessee is in appeals before us.
5. We have heard Ld DR 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 these backgrounds in our considered opinion assessee cannot be visited with the regours of penalty under section 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 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 Hindustan Steel Ltd. Vs. State of Orissa (83 ITR 26), where in it was held that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious.
6. In the background of the aforesaid discussion and precedent, we set aside the orders of learned CIT(A) and delete the levy of penalty.
7. In the result, both the appeals by the assessee are allowed.

Pronounced in the open court on 6.4.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/04/2021

Copy of the Order forwarded to :

1. The Appellant

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai