

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 5211/Mum/2019 (Assessment Year 2011-12)

ITO-5(2)(3) Room No. 566 Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.	Vs.	M/s. Mokalsar Steel Private Limited 104, 1 st Floor Kandoori Building 215, Panjrapolie Road Mumbai-400 004. PAN : AACCM4584A
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Bharat Andhle
Date of Hearing	09.03.2021
Date of Pronouncement	12.03.2021

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the Revenue against the orders of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 10.5.2019 wherein following penalty under section 271(1)(c) of the Income tax Act has been deleted.

Assessment year	Amount of penalty
2011-12	Rs. 73,532/-

2. Brief facts of the case leading to the levy of penalty are that the assessee is a company engaged in business of trading in ferrous metals. For AY 2011-12, the assessee had e-filed a return of income on 26.07.2011 declaring total income at Rs.1,07,201/-. Subsequently, the case was reopened by issue of notice u/s. 148 of the Act, on the basis of the information received from the DGIT(Investigation), Mumbai that the assessee is a beneficiary of the accommodation entries provided by some of the MVAT [Maharashtra Value Added Tax] dealers, who have indulged in issuing bogus sale/purchase bills

without giving actual delivery of goods and materials from the hawala dealers. An assessment u/s 143(3) r.w.s. 147 determining an income at Rs. 20,11,308/- was concluded on 18.01.2016. In the assessment order, the AO made an addition of Rs. 19,03,778/- to the total income of the assessee by disallowing the expenses claimed by the assessee company on account of accommodation entries of bogus purchases. The assessee preferred an appeal before the Ld. CIT (A), who confirmed the addition, however the Hon'ble ITAT Mumbai restricted the addition to Rs. 2,37,972/- estimated @ 12.5% of the bogus purchase of Rs. 19,03,778/-. The AO who had initiated penalty proceedings for furnishing inaccurate particulars of income earlier, levied a penalty of Rs. 73,532/- u/s 271(1)(c) of the Act vide order dated 30.11.2018.

3. Upon assessee's appeal learned CIT(A) deleted the penalty holding that addition is only on estimate basis hence, penalty is not sustainable. He also referred to several case laws.

4. Against this order revenue is in appeal 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 Steels 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. 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.

7. In the background of aforesaid discussion and precedent we uphold the order's of Ld CIT(A) and delete the levy of penalty.

8. In the result, Revenue's appeal is dismissed.

Pronounced in the open court on 12.03.2021.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/03/2021

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