

THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4573/Mum/2019 (Assessment Year 2010-11)

DCIT, Circle-1 Room No. 22, B-Wing Ashar I.T. Park Wagle Industrial Estate Thane-West-400 604.	Vs.	Shri Dalersingh Mathadu C-802, Sarita Vihar, Near Axis Bank, Hariniwas Circle CHS Ltd. Thane-West-400602.  PAN : ADEPM8852H
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Bharat Andhale
Date of Hearing	04.03.2021
Date of Pronouncement	01.04.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 30.4.2019, wherein penalty of Rs. 1,72,901/- levied under section 271(1)(c) of the I.T. Act has been deleted.

2. Brief facts of the case leading to levy of penalty are that the Assessing Officer in this case made disallowance on account of bogus purchases. The assessee has supplied the purchase vouchers and the payments were shown to have been made by banking channel. However, drawing adverse inference for the non-production of the suppliers the Assessing Officer disallowed the bogus purchases. However the Assessing Officer did not doubt the sales. Penalty under section 271(1)(c) of the Act was also levied. Learned CIT(A) deleted the penalty levied.

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

4. We have heard learned Departmental Representative and perused the records. As clear from the facts recorded above, the disallowance has been

made on account of the non-production of suppliers before the Assessing Officer. The purchase vouchers were duly produced and the payments were made through banking channel. The sales are not doubted. In these background in our considered opinion the assessee cannot be visited with the rigours 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 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 in the case of Hindustan Steel Ltd. Vs. State of Orissa (83 ITR 26), wherein it was held that the authority may not levy penalty if the conduct of the assessee is not found to be contumacious. Moreover, it is also noted that the tax effect in this case is below the limit fixed by CBDT for filing appeal before the Tribunal. The plea that addition was based on sales tax department has nothing to do with penalty under section 271(1)(c) of the Act in this case as the penalty is based upon Assessing Officer's order.

5. In the background of the aforesaid discussion and precedent we confirm the order of learned CIT(A) and delete the penalty.
6. In the result, Revenue's appeal is dismissed.

Pronounced in the open court on 1.4.2021.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/04/2021

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//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai