

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

I.T.A. No. 6287/Mum/2019 (Assessment Year 2011-12)

ACIT-32(1) Room No. 702 7 th Floor, Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051.	Vs.	Shri Chandraiah Balanna Kalal Plot No. 71, Dimandar CHSL RSC 21, Gorai-1 Borivali West Mumbai-400 092. PAN : AABPK8755H
(Appellant)		(Respondent)

Assessee by	Shri Sumit Mantri
Department by	Shri Brajendra Kumar
Date of Hearing	29.04.2021
Date of Pronouncement	03.05.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is against order's of learned CIT(A) dated 26.7.2019 wherein penalty of Rs. 2,14,383/- levied under 271(1)(c) of the I.T. Act has been deleted.

2. Brief facts of the case leading to the levy of penalty are that the assessing officer in these cases 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 nonproduction of the suppliers the assessing officer disallowed 100% of the bogus purchases. However the assessing officer did not doubt the sales. The learned CIT(A) confirmed the addition only @ 11.69% of the bogus purchases. Penalty under section 271(1)(c) of the Act was also levied. Ld CIT(A) deleted the penalty holding that in similar bogus purchases matter, penalty on estimated disallowance for bogus purchase was deleted by the ITAT in another case.

3. Against this order 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 sustained by learned CIT(A) has been made on an estimated basis on account of the nonproduction 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.
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.
6. In the background of aforesaid discussion and precedent we uphold the order's of Ld CITA and delete the levy of penalty.

7. In the result, Revenues 's appeal is dismissed.

Pronounced in the open court on 3.5.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/05/2021

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