

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)
AND
SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.5432/Mum/2019
(Assessment year 2010-11)

Income-tax Officer 9(3)(4) Mumbai	vs	M/s Gujarat Chemi Plants Pvt Ltd 601, Vikrm Apartments, JankiKutir Juhu Church Road, Mumbai-400 049 PAN : AAACG3984E
APPELLANT		RESPONDENT

Appellant by	Shri Manpreet S Duggal (DR)
Respondent by	Shri K.J. Bafna (AR)

Date of hearing	31-03-2021
Date of pronouncement	03-05-2021

ORDER

Per Saktijit Dey (JM):

This appeal by the revenue is against order dated 30-05-2019 of learned Commissioner of Income-tax (Appeals)-16, Mumbai deleting the penalty imposed of Rs.23, 874/- under section 271(1)(c) of the Income-tax Act for the assessment year 2010-11.

3. We have considered rival submissions and perused the materials on record.

Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 26-09-2010. Subsequently, the assessing officer, having received information from the sales-tax department, Government of Maharashtra through the DGIT(Inv), Mumbai that the assessee is a beneficiary of accommodation bills provided by way of alleged non genuine purchases, reopened the assessment under section 147 of the Act. While completing the assessment under the said provision, the assessing officer disallowed an amount of Rs.6,10,097/- representing the alleged bogus purchases. On the basis of such disallowance, the assessing officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income. Subsequently, the assessing officer found that while deciding assessee's appeal against the disallowance of the purchases, learned Commissioner of Income-tax (Appeals) had granted partial relief to the assessee by disallowing the profit element embedded in the alleged bogus purchases by estimating the same at 12.5%. On the basis of addition sustained by learned Commissioner of Income-tax (Appeals), the assessing officer ultimately, passed an order on 26-03-2018 imposing penalty of Rs.23,874/- alleging concealment of income. Against the penalty order so passed, assessee preferred appeal before learned Commissioner of Income-tax (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner of Income-tax (Appeals) deleted the penalty imposed.

4. On analyzing the facts on record and perusing the impugned order of learned Commissioner of Income-tax (Appeals) we find that though the assessing officer had disallowed the entire purchases alleged to be bogus;

however, learned Commissioner of Income-tax (Appeals) restricted the disallowance to 12.5% being the profit element estimated on the alleged bogus purchases. Thus, from the aforesaid facts it is very much clear that the purchase of goods by the assessee is not in doubt, but the source of such purchases is doubtful. For that reason alone, the learned Commissioner of Income-tax (Appeals) has made an estimated addition. In the aforesaid scenario, it cannot be said that the assessee has, either concealed its income or furnished inaccurate particulars of income. That being the case, we do not find any infirmity in the order of learned Commissioner of Income-tax (Appeals) in deleting the penalty imposed.

4. In the result, appeal is dismissed.

Order pronounced on 05/05/2021.

Sd/-

sd/-

(PRAMOD KUMAR)	(SAKTIJIT DEY)
VICE PRESIDENT	JUDICIAL MEMBER

Mumbai, Dt : 03/05/2021

Pavanan

Copy to :

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

By Order

Asstt. Registrar, ITAT, Mumbai

