

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

ITA Nos. 7993 to 7995/Mum/2019
(Assessment Years: 2009-10 to 2011-12)

ITO, Ward-3(4) Room No. 09, 6 th Floor, B-Wing, Wagle Industrial Estate, Thane (W)-400 604	Vs.	M/s. Vikas Sales Corporation Flat No. 2003, 20 th Floor, Building No.3, Steppes Vasant Lawns, Nr. Jupiter Hospital, Majiwada, Thane (W)-400 604
PAN/GIR No. AAHFV 0783 C		
(Appellant)	:	(Respondent)
Appellant by	:	None
Respondent by	:	Ms. Usha Gaikwad
Date of Hearing	:	01.06.2021
Date of Pronouncement	:	02.06.2021

ORDER

Per Shamim Yahya, A. M.:

These are appeals by the revenue against the respective order's of learned CIT(A), wherein following penalty levied u/s.271(1)(c) has been deleted :-

<u>Assessment year</u>	<u>Amount of Penalty</u>
2009-10	7,06,127
2010-11	20,82,225
2011-12	10,48,756

2. Brief facts of the case leading to the levy of penalty are that the assessing officer in these cases made disallowance of 12.5% 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 non-production of the suppliers the assessing officer disallowed 12.5% of the bogus purchases. However, the assessing officer did not doubt the sales. The learned CIT(A) confirmed the addition. Penalty u/s.271(1)(c) was also levied. The ld. CIT(A) deleted the penalty.

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

4. We have heard the 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 background, in our considered opinion, the assessee cannot be visited with the rigours of penalty u/s.271(1)(c). 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. V. State of Orissa* (1972) 82 ITR 26 (SC), wherein 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 CIT(A) and delete the levy of penalty.

7. In the result, the Revenue's appeals are dismissed.

Order pronounced in open court on 02.06.2021.

Sd/-

(Amarjit Singh)
Judicial Member

Sd/-

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 02.06.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai