

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4162/Mum/2019
(A.Y: 2009-10)

Pravin Hirabhai Patel C-70, Harishvardhan CHS Ltd., Plot No. 185, Saki Vihar Road, Powai, Mumbai – 400072.	Vs.	ITO – ward 26(2)(4) C-11, Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai – 400051.
PAN/GIR No. : AAIPP2779H		
Appellant	..	Respondent

Appellant by :	Shri Roshan Ochani, AR
Respondent by :	Shri Manpreet Duggal, DR

Date of Hearing	04.05.2021
Date of Pronouncement	11.05.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) -17 Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“1. Because the order of the CIT(A) confirming the penalty to the tune of Rs. 13,12,378/- levied by the Ld. AO in the assessment order is devoid of principles of natural justice as no penalty can be levied in situation where creditor become

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hostile and merely on the basis of that the assessee has agreed to the addition to buy piece of mind.

2. *Because Ld. CIT(A) erred in law and on facts in stating that the appellant failed to substantiate purchases even when the appellant has submitted invoices and bank statements evidencing payment to suppliers during the course of assessment proceedings and only on the basis of statement of supplier party made before sales tax office.*

3. *Because the Ld. CIT(A) erred in law and on facts in having any sustainable evidence to levy penalty as there was no additional evidence to establish that there conscious or deliberate furnishing of inaccurate particulars or concealment in respect of the alleged bogus purchases.*

4. *Because Ld. AO and CIT(A) erred in law and on facts in levying penalty of Rs. 13,12,378/- even when the authorities above failed to substantiate that whether the assessee has concealed the particulars of income or furnished in accurate particulars of income to this extent, notice u/s 274 and finding in assessment order is vague.*

2. The brief facts of the case are that, the assessee is engaged in the business of trading in supply of stationery items & Xerox. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 with the total income of Rs.7,98,910/-.The return of income was processed u/s 143(1) of the Act. The A.O has received information from the sales tax department through DGIT (Inv.) Wing, Mumbai that the assessee has entered into bogus purchase transactions with several parties who are providing accommodation bills. As per the information, the assessee is one of the beneficiary and obtained bogus

bills aggregating to Rs.3,09,16,973/- from 18 parties and based on the said information the A.O. has Subsequently, issued the notice u/s 143(2) and 142(1)of the Act. In compliance, the Ld.AR of the assessee appeared from time to time and the case was discussed. The A.O considered the material on record and observed that the assessee could not prove the genuineness of the transaction of purchases. Further the A.O has issued notice u/s 133(6) of the Act on the parties, to cross verify the claim of the assessee. But the said notice was returned us-served with remark left/not known by the postal authorities. The A.O considering the facts and details submitted by the assessee has dealt on the disputed issue and required the assessee to prove the purchase transactions are genuine. In compliance the assessee has filed submissions on 12.03.2015 but the A.O. was not satisfied with the reply and supporting documents. Finally the A.O. has estimated profit element on non-genuine purchases @ 12.5% which works out to Rs 38,64,662/-and assessed the total income of Rs. 46,63,532/-and passed the order u/s 143(3) r.w.s 147 of the Act.

Subsequently, the A.O. has initiated penalty proceedings u/s271(1)(c) of the Act, Since assessee has entered into

bogus purchase transactions, the A.O relied on the findings in the scrutiny assessment and assessee submissions on 23-09-2015 filed in the penalty proceedings. The A.O. has not accepted the assessee contentions and has levied penalty based on the addition made in the scrutiny assessment, which worked out to Rs.13,12,378/- and passed the order u/s 271(1)(c) of the Act.

3. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and the submissions of the assessee but the confirmed the action of the A.O in levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR of the assessee submitted that the assessee has cooperated in submitting the information before the A.O. There is no wanton act of the assessee for non compliance and supported his arguments with judicial decisions Contra, the Ld. DR supported the order of the Ld. CIT(A).

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5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to levy of penalty u/s 271(1)(c) of the Act by the A.O based on the assessment order under section 143 r.w.s 147 of the Act. We find the A.O has made adhoc disallowance of bogus purchases on estimation of income but has accepted the sales in the books of accounts. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11.05.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 11.05.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai