



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA no.5478/Mum./2019  
(Assessment Year : 2009-10)

ITA no.5479/Mum./2019  
(Assessment Year : 2010-11)

ITA no.5480/Mum./2019  
(Assessment Year : 2011-12)

Income Tax Officer  
Ward-9(3)(2), Mumbai

..... Appellant

v/s

Dytex Seals India Pvt. Ltd.  
Gala no.2A, 1<sup>st</sup> Floor  
Sadhna Industrial Estate  
S.V. Road, Mumbai 400 102

..... Respondent

Assessee by : None  
Revenue by : Shri Kailash Kanojiya

Date of Hearing - 22.03.2021

Date of Order - 25.05.2021

**ORDER**

**PER S. RIFAUH RAHMAN, A.M.**

The captioned appeals have been filed by the Revenue challenging the impugned orders of even date 21<sup>st</sup> April 2018, passed by the learned Commissioner (Appeals)-16, Mumbai, deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") imposed by the Assessing Officer which pertain to the assessment year 2009-10, 2010-11 and 2011-12 respectively.

The penalty so imposed by the Assessing Officer for the respective assessment years is given below:–

A.Y. 2009–10	₹ 40,172
A.Y. 2010–11	₹ 52,300
A.Y. 2011–12	₹ 20,025

2. Since all these appeals pertain to the same assessee involving one common issue which arose out of mutatis mutandis identical set of facts and circumstances, except variation in figures, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

3. When the case was called for hearing, neither the assessee nor any of its authorized representatives appeared before us to assist the Bench. There is no application for adjournment either. Accordingly, we proceed to dispose off these Revenue's appeal ex-parte qua the respondent assessee after hearing the learned Departmental Authorities and on perusal of the material available on record.

**ITA no.5478/Mum./2019**  
**Assessment Year – 2009–10**

4. Facts in brief:– The assessee for the assessment year 2009–10, filed its return of income on 5<sup>th</sup> September 2009, declaring total income of ₹ 1,18,440. The Assessing Officer completed assessment under section 143(3) r/w section 147 of the Act on 27<sup>th</sup> March 2015, assessing total income at ₹ 11,58,500, after disallowing bogus

purchase to the tune of ₹ 10,40,056, from various parties. The learned Commissioner (Appeals), during the first round of appeal, considering the facts and circumstances of the case has upheld the addition to the extent of 12.5% of the total purchases made from the bogus parties. The Assessing Officer, consequent upon the addition made by the learned Commissioner (Appeals), issued letter dated 2<sup>nd</sup> February 2018, seeking explanation as to why penalty should not be imposed under section 271(1)(c) of the Act. However, the Assessing Officer ultimately passed penalty order dated 21th March 2018, imposing penalty under section 271(1)(c) of the Act for ₹ 40,172. The assessee being aggrieved by this penalty order, filed appeal before the first appellate authority.

5. The learned Commissioner (Appeals) deleted the penalty by relying upon the decision of the Hon'ble Supreme Court in CIT v/s Reliance Petroproducts Pvt. Ltd., [2010] 322 ITR 158 (SC) and other Co-ordinate Bench decisions. He came to the conclusion that penalty is not sustainable in the eyes of law.

6. The Revenue being aggrieved with the aforesaid order of the learned Commissioner (Appeals), is in appeal before the Tribunal.

7. Before us, the learned Departmental Authorities relied upon the penalty order of the Assessing Officer and submitted that the initial

addition made by the Assessing Officer was upheld by the learned Commissioner (Appeals) during the first round of appeal and, hence, the Assessing Officer was justified in levying the penalty.

8. Considered the rival submission and material placed on record. As it transpires from the record available before us, we find that the Assessing Officer imposed penalty under section 271(1)(c) of the Act on estimation basis without adducing any evidence on record for concealment of income. In accordance with the provisions contained under section 271(1)(c) of the Act, penalty under section 271(1)(c) of the Act is liable to be imposed only where the assessee has concealed its particulars of income or furnished inaccurate particulars. However, the estimation of income on higher side cannot contemplate imposition of penalty, hence, cannot be termed as either concealment or furnishing of inaccurate particulars of income. We find support from the series of decisions by different High Courts as well the decision rendered by the Co-ordinate Benches of the Tribunal, wherein it was held that when addition is made on estimate basis, no penalty is sustainable. In support of this contention, following case laws are relied upon:-

- i) *CIT v/s Norton Electronics Systems (P) Ltd. [2014] 41 taxmann.com 280 (Allahabad HC);*
- ii) *ACIT v/s Vision Research Management (P) Ltd., [2015] 63 taxmann.com 8 (Lucknow) (Trib.);*

- iii) *Prem Chand v/s ACIT, [2014] 52 taxmann.com 95 (Chandigarh) (Trib.);*
- iv) *CIT v/s PHI Seeds India Ltd., [2008] 301 ITR 0013 (Del); and*
- v) *Dilip N. Shroff v/s JCIT [2007] 291 ITR 519 (SC).*

9. On careful consideration of the facts and circumstances of the case in the light of the decisions relied upon as aforesaid, we are of the considered view that the learned Commissioner (Appeals) was indeed justified in deleting the penalty, as there was no concealment of income on the part of the assessee and additions made on estimation by the Assessing Officer do not call for initiation of penalty. Consequently, in our considered opinion, the penalty levied by Assessing Officer was rightly deleted by the learned Commissioner (Appeals). Accordingly, we uphold the order passed by the learned Commissioner (Appeals) by dismissing the grounds of appeal raised by the Revenue.

10. In the result, Revenue's appeal for A.Y. 2009-10 is dismissed.

**ITA no.5479/Mum./2019**  
**Assessment Year – 2010-11**

**ITA no.5480/Mum./2019**  
**Assessment Year – 2011-12**

11. The facts and circumstances of the issue arising out of these appeals are mutatis mutandis identical, except variation in figures, and

the said issue is decided by us in the appeal for the assessment year 2009–10 as aforesaid wherein we have upheld the order of the learned Commissioner (Appeals) by dismissing the grounds raised by the Revenue. Since the issue being common in the years under consideration also, consistent with the view taken in Para–8 and 9 above, following the same, we uphold the order of the learned Commissioner (Appeals) in these assessment years also and dismiss the grounds raised by the Revenue.

12. In the result, Revenue's appeal for A.Y. 2010–11 and 2011–12 are dismissed.

Order pronounced in the open court on 25.05.2021

**Sd/-**  
**MAHAVIR SINGH**  
**VICE PRESIDENT**

**Sd/-**  
**S. RIFAUH RAHMAN**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 25.05.2021**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai