



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

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.6274/Mum./2019
(Assessment Year : 2010-11)

Income Tax Officer
Ward-13(3)(1), Mumbai

..... Appellant

v/s

M/s. Reinfibre Products India P. Ltd.
410, Everest Apartments
PPN Road, Versova, Andheri (W)
Mumbai 400 061 PAN – AACCR0813R

..... Respondent

Revenue by : Shri Gurbinder Singh
Assessee by : None

Date of Hearing – 10.05.2021

Date of Order – 10.06.2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

This appeal filed by the Revenue challenging the impugned order dated 28th June 2019, passed by the learned Commissioner (Appeals)-21, Mumbai, deleting the penalty of ₹ 4,36,642, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") by the Assessing Officer for the assessment year 2010-11.

2. Facts in brief:- In the present case, the assessee for the year under consideration has filed its return of income on 28th September 2010, declaring total income of ₹ 15,86,890. The said return of income was processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department indicating that the assessee is a beneficiary of accommodation entries provided by hawala operators through bogus purchase bills, and hence, the Assessing Officer re-opened the assessment under section 147 of the Act and made addition of ₹ 29,43,922, as 12.5% of the aggregate amount of ₹ 2,35,51,374. The assessee being aggrieved by the assessment order so passed by the Assessing Officer filed appeal before the first appellate authority wherein the learned Commissioner (Appeals) granted partial relief to the assessee by restricting the addition on account of bogus purchase at a flat rate of 6%. Being aggrieved by the order of the learned Commissioner (Appeals), the assessee filed appeal before the Tribunal wherein the disallowance was restricted to ₹ 14,13,080 i.e., @ 6% of the total transaction amount of ₹ 2,35,51,374. As a result of the disallowance so restricted by the Tribunal, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act and after considering the submissions of the assessee held that the reply of the assessee is not tenable based on the findings mentioned in the assessment order. He held that the

learned Commissioner (Appeals) has restricted the addition to the flat rate of 6% and the Tribunal upheld the order of the learned Commissioner (Appeals) by dismissing the appeal of the assessee. Since the addition of ₹ 14,13,080, was confirmed by the Tribunal, the Assessing Officer levied penalty of ₹ 4,36,642, under section 271(1)(c) of the Act. The assessee being aggrieved by the penalty order passed by the Assessing Officer, carried the matter before the learned Commissioner (Appeals).

3. The learned Commissioner (Appeals) after considering the submissions of the assessee directed the Assessing Officer to delete the penalty imposed by the him under section 271(1)(c) of the Act. The relevant observations of the learned Commissioner (Appeals) deleting the penalty are as follows:—

"5. Decision:

I have carefully considered the facts of the case and submissions made by the assessee. It is seen from the facts available on record that the assessee is a Private

Limited company and engaged in the business of manufacturing metals and chemicals and products therefore and supplying the same to Government. The assessee filed return of income on 28.09.2010 declaring total income of RS.15,86,890/-. Based on the information received from Sales-tax authorities in respect of the assessee company's involvement in the practice of evading taxes by showing bogus purchases from tainted parties, the case was re-opened for scrutiny on approval from higher authorities. After analysis of the facts of the case and documents produced by the assessee, the AO. established that the assessee was involved in hawala business and concluded the reassessment

proceedings u/s 143(3) r.w.s. 147 of Income-tax Act, 1961 on 13.02.2015 by adding Rs.29,43,922/- (@ 12.5% of the amount of hawala transaction). Penalty proceedings u/s 271(1)(c) were initiated separately for furnishing inaccurate particulars of income. Subsequently, CIT(A) had restricted the disallowance to 6% of the bogus transaction amount. On further appeal, Hon'ble ITAT, Mumbai upheld the disallowance made by CIT(A). Consequently, after analysis of the submissions filed by the assessee during penalty proceedings and materials available on record, the AO. levied penalty of Rs.4,36,642/- @ 100% of the tax sought to be evaded u/s 271(1)(c) of the Act on 27.03.2018 after receipt of necessary approval from the Jt CIT, Range-13(3), Mumbai. Aggrieved by the said penalty, the appellant filed appeal against the penalty relying on a catena of judgements.

6.2 The Appellant contended against the penalty stating that the penalty has been levied on estimated income which had further been reduced by CIT(A) and referred various judgements on the issue. I have perused the facts of the case, reasons cited by the AO in the penalty order and submissions filed by the appellant. Mere fact that the addition has been accepted or is confirmed in quantum proceedings cannot be conclusive of penalty imposition. It is observed that the addition has been made only on the basis of estimate made by the AO and it is settled position that when income is estimated, there can be no question of imposing penalty u/s 271(1)(c) of the Act. When an estimation is done, it becomes nearly debatable in respect of the rate/percentage of estimation and depends upon various parameters. The appellant cited several decisions in favour of it, on the same issue.

6.3 The Hon'ble IT AT, Mumbai deleted the penalty levied for furnishing inaccurate particulars of income in respect of bogus purchases in the case of Evergreen technologies Pvt Ltd Vs DCIT ITA No 1833/Mum/2016 dated 26.07.2017. Similarly, the Hon'ble Delhi High Court in case of CIT Vs Aero traders Pvt Ltd (2010) 322 ITR 316 (Del) has held that no penalty can be imposed u/s 271(1)(c) when income is determined on estimate basis. The similar view has been taken by:

A) Hon'ble Apex Court in the case of CIT Vs Sangrur Vanaspati Mills Ltd SLP No 31541 of 2008 dated 19.12.2008

B) Hon'ble Punjab and Haryana High Court in Harigopal Singh Vs CIT (2002) 2581TR 85

C) Hon'ble Gujrat High Court in CIT Vs Subhash Trading Co 221 ITR 110 ITAT, Mumbai in Chempure Vs ITa ITA No 451,452 &

453/Mum/2006

D) ITAT, Mumbai in Sonali A. Shah Vs ITO, ITA No 5720/M/2013

6.4 Further, the Hon'ble IT AT, Mumbai in the case of Earthmoving Equipment Services Corporation Vs DC IT ITA No 6617 dated 02.05.2017 has deleted penalty levied by the Ao for furnishing inaccurate particulars of income in respect of bogus purchases. Keeping in view the facts and circumstances of the case discussed above, I am of considered opinion that the additions on which penalty in dispute has been imposed is purely on estimation basis and the AO has not brought any material on record to establish any malafide intention of the assessee to evade tax in the return filed. In view facts of the case and various judicial decisions available, the AO is directed to delete the penalty levied u/s 271(1)(c) of Income-tax Act, 1961. Therefore, this ground of appeal is allowed."

4. The Revenue being aggrieved by the aforesaid order of the learned Commissioner (Appeals) filed appeal before the Tribunal.

5. Considered the submissions of the learned Departmental Authorities and perused the material on record. We find 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. 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. Action of making addition on ad-hoc basis does not result into imposition of penalty u/s 271(1)(c) of the Act and 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 of the Co-ordinate Benches of the Tribunal, wherein it was held that when addition is made on estimate basis, penalty is not sustainable in the eyes of law. 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).*

6. Even the learned Departmental Authorities has not brought any cogent material to prove otherwise warranting interference at the instance of the Revenue. In this view of the matter, we are of the considered view that the learned Commissioner (Appeals) was indeed justified in directing the Assessing Officer to delete the penalty, as there was no concealment of income on the part of the assessee have been proved by the Revenue and additions made on estimation by the Assessing Officer do not call for initiation of penalty. Consequently, we uphold the order passed by the learned Commissioner (Appeals) by dismissing the grounds of appeal raised by the Revenue.

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

Order pronounced in the open court on 10.06.2021

Sd/-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 10.06.2021

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