

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Before Hon'ble Justice P.P. Bhatt (President) &
Shri Shamim Yahya (Accountant Member)

I.T.A. No. 6777/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 6778/Mum/2019 (Assessment Year 2011-12)

ACIT-23(2) 1 st Floor Room No. 120 Matru Mandir Tardeo Road Mumbai-400 07.	Vs.	Purshottamdas Agarwal Prop. M/s. Kanahaiya Chemicals, 307, Sai Sadan 76/78, Modi Street, Fort Mumbai-400 001. PAN : AACPA5232C
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Shreekala Pardeshi
Date of Hearing	05.07.2021
Date of Pronouncement	13 .07.2021

O R D E R

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against a common order of learned CIT(A) dated 26.8.2019 wherein following penalty levied under 271(1)(c) of the I.T. Act has been deleted :-

Assessment Year	Amount of Penalty
2010-11	60287/-
2011-12	16,223/-

2. Brief facts of the case leading to the levy of penalty are that the assessing officer in these cases made disallowance of 20% 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 nonproduction of the suppliers the assessing officer disallowed 20% of the bogus purchases. However the assessing officer did not doubt the sales. Penalty under section 271(1)(c) of the Act was also levied.

3. Learned CIT(A) deleted the penalty holding that the amount involved was very low.
4. Against this order Revenue is in appeals before us.
5. We have heard learned Departmental Representative 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 backgrounds in our considered opinion assessee cannot be visited with the rigours of penalty under section 271(1)(c) of the Act. 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 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 honourable Supreme Court in the case of Hindustan Steel Ltd. Vs. the State of Orissa (83 ITR 26), where in it was held that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious.
6. 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.

7. In the background of aforesaid discussion we are of the opinion that these appeals by the Revenue are liable to be dismissed. Hence these appeals are dismissed as such.

8. In the result revenue's appeals are dismissed.

Pronounced in the open court on 13.07.2021

Sd/-
(JUSTICE PP BHATT)
PRESIDENT

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 13 /07/2021

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai