

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5486/MUM/2019
Assessment Year: 2009-10**

DCIT – 9(2)(2), Room No. 655A, 6 th Floor, Aayakar Bhavan, Churchgate, Mumbai - 400020	Vs.	M/s EMS Electricals & Engineering Pvt. Ltd., 1, Archana Smruti, Mahakali Caves Road, Andheri (East), Mumbai - 400093 PAN: AAACE6785H
(Appellant)		(Respondent)

Revenue by : Shri Vijay Kumar Menon (DR)
Assessee by : None

Date of Hearing: 28/06/2021
Date of Pronouncement: 20/07/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against order dated 20.05.2019 of learned Commissioner of Income Tax (Appeals)-16, Mumbai deleting the penalty imposed of Rs. 58,333/- under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present for the assessee to represent the case. Considering the nature of dispute, we dispose of the appeal ex-parte qua the assessee after hearing the Departmental Representative and based on materials on record.

3. Briefly the facts are, the assessee is a resident company stated to be engaged in the business as electrical contractors. For the assessment year under dispute, the assessee filed its return of income on 30.03.2010 declaring total income of Rs. 94,63,730/-. Subsequently, based on information received

from Sales Tax Authorities indicating that the assessee is a beneficiary accommodation bills provided by way of bogus purchases amounting to Rs. 15,10,247/-, the Assessing Officer (AO) reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to prove the genuineness of the aforesaid purchases. Though, the assessee furnished some evidences to claim the purchase as genuine, however, rejecting assessee's claim the AO completed the assessment by treating the purchase of Rs. 15,10,247/- as non genuine. Assessee contested the aforesaid decision of the AO before learned Commissioner (Appeals). Partly accepting the claim of the assessee, learned Commissioner (Appeals) restricted the disallowance to the profit element embedded in the alleged non genuine purchases by estimating at 12.5%. Thus, he sustained the addition to the extent of Rs. 1,88,781/-. Based on addition sustained by learned Commissioner (Appeals), the AO initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs. 58,333/- alleging concealment of income. While considering assessee's appeal on the issue, learned Commissioner (Appeals) deleted the penalty imposed.

4. We have considered the submissions of learned Departmental Representative and perused the materials on record. It is evident, though, the AO has disallowed certain purchases made by the assessee in the year under consideration by relying upon the information received from Sales Tax Authorities, however, learned Commissioner (Appeals) on examination of facts and materials on record was convinced that the disputed goods, indeed, were purchased by the assessee. Thus, he was of the view that what is in doubt is the source of purchases. For this reason alone, he restricted the disallowance to the profit element embedded in the alleged non-genuine purchases by estimating at 12.5%. Thus, it is very much clear that the addition leading to the imposition of penalty was made purely on estimate basis by entertaining some doubt regarding the source of purchases. Therefore, such estimated addition, in our view, cannot lead to the conclusion that the assessee has

concealed its income. That being the case, learned Commissioner (Appeals) was justified in deleting the penalty imposed under section 271(1)(c) of the Act.

5. Even, otherwise also, present appeal of the revenue is not maintainable keeping in view Circular No. 17/2019 dated 08.08.2019 as the tax effect on the amount disputed is less than the threshold limit of Rs. 50 lacs. We may further add, in our view, the appeal is not protected under any of the exceptions to the aforesaid circular. Thus, for this reasons also, the appeal deserves to be dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 20th July, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai