



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.7946/Mum./2019
(Assessment Year : 2011-12)

ITA no.7947/Mum./2019
(Assessment Year : 2010-11)

M/s. Sandeep Steel
511, Ashirwad Building
Ahmedabad Street, Carnac Bunder
Mumbai 400 009 PAN-ABAFS1100J

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Ward-17(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Vijay Kumar Menon

Date of Hearing - 01.06.2021

Date of Order - 27.07.2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeals preferred by the assessee challenging the impugned orders of even dated 21st November 2019, passed by the learned CIT(A)-28, Mumbai, confirming penalty of ₹ 1,09,164, for the assessment year 2010-11, and penalty of ₹ 2,78,633, for the assessment year 2011-12 imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") by the Assessing Officer.

2. Before us, during the course of hearing when these appeals were called for hearing neither the assessee nor any of her authorized representatives was present on behalf of the assessee to represent the case. There is no application for adjournment of hearing either. Consequently, we deem it fit and appropriate to proceed to dispose off the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Since both these appeals pertain to the same assessee involving common issue, except variation in figures, which arose out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal being ITA no.7947/Mum./2019, for assessment year 2010-11, the conclusive result of which will be applicable equally to the other appeal being ITA no.7946/Mum./2019, for the A.Y. 2011-12.

ITA no.9747/Mum./2019
Assessment Year – 2010-11

4. Facts in brief:- The assessee firm is engaged in the business of import and dealer in SS & MS items. The assessee filed its return of

income on 30th September 2010, for the assessment year 2010–11 declaring total income of ₹ 2,47,97,450. The return of income was processed under section 143(1) of the Act. Meanwhile, the Assessing Officer received information from the Sales Tax Department, Mumbai, through DGIT (Inv.), Mumbai, that some of the dealers under MVAT Act, 2002, indulging in the practice of providing accommodation entries in the form of issuing bogus sales bills/ tax invoice i.e., not supplying the goods physically but providing sales bills only. The Assessing Officer noticed that the assessee has made bogus purchase to the tune of ₹ 88,31,987, from five parties. Accordingly, the case was re-opened under section 147 of the Act and after recording the reasons notice dated 15th October 2015, under section 148 of the Act was issued and served upon the assessee. In response, the assessee furnished its written submissions on 15th December 2015. However, the submissions of the assessee were not acceptable to the Assessing Officer. He held that the primary onus is on the assessee to establish the genuineness of all the expenses including purchases to the satisfaction of the Assessing Officer, which was not discharged by the assessee. No corroborative evidence has been filed by the assessee. He held that the assessee has failed to discharge his obligation to prove the genuineness of purchases beyond doubt. Hence, the Assessing Officer made addition of ₹ 88,31,987, on account of entire bogus purchase and added to the income of the assessee. The

quantum addition was challenged before the first appellate authority wherein the learned CIT(A) has restricted the addition to 4% of the aggregated bogus purchase. Consequent upon the addition confirmed by the learned CIT(A), the Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars of income and vide order dated 12th September 2018, imposed penalty of ₹ 1,09,164, being 100% of the tax sought to be evaded on account of addition made for bogus purchase. The assessee being aggrieved by the penalty order so passed by the Assessing Officer filed appeal before the first appellate authority for contesting the penalty imposed under section 271(1)(c) of the Act.

5. The learned CIT(A) confirmed the penalty imposed by the Assessing Officer under section 271(1)(c) by relying upon the judicial pronouncements rendered by the Hon'ble High Courts, Hon'ble Supreme Court as well as the Co-ordinate Bench decisions of this Tribunal. The assessee being aggrieved with the confirmation of penalty under section 271(1)(c) of the Act by the learned CIT(A), filed appeal before the Tribunal.

6. Considered the submissions of the learned Departmental Representative and perused the material on record. As it appears, the Assessing Officer imposed penalty under section 271(1)(c) of the Act

on the basis of ad-hoc addition on account of bogus purchase that too 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).*

7. 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 CIT(A) was indeed not justified in confirming the penalty imposed by the Assessing Officer, 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 set aside the impugned order passed by the learned CIT(A) by deleting the penalty imposed under section 271(1)(c) of the Act.

8. In the result, assessee's appeal is allowed.

ITA no.9746/Mum./2019
Assessment Year – 2011-12

9. The issue raised in this appeal relates to imposition of penalty of ₹ 2,78,633, on account of bogus purchase.

10. The related facts and circumstances of the issue raised by the assessee in this appeal is materially identical to the issue decided by us vide ground no.1, raised by the assessee in its appeal being ITA no. 7947/Mum./2019, for the assessment year 2010-11, vide Para-6 & 7 of this order, wherein we have deleted the penalty for the reasons stated therein. Consistent with the view taken therein, we set aside the impugned order passed by the learned Commissioner (Appeals) and delete the penalty under section 271(1)(c) of the Act so imposed by the Assessing Officer and confirmed by the learned CIT(A).

11. In the result, both the appeals are allowed.

Order pronounced in the open court on 27.07.2021

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

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

MUMBAI, DATED: 27.07.2021

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