



IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.7953/Mum./2019
(Assessment Year : 2009-10)

Shri Shripal Rashmikant Daftary
5, Rajnesh S.N. Road, Mulund (W)
Mumbai 400 080 PAN – AAQPD2146N

..... Appellant

v/s

Income Tax Officer
Ward-29(3)(4), 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 aforesaid appeal preferred by the assessee challenging the impugned order dated 23rd October 2019, passed by the learned CIT(A)-40, Mumbai, confirming penalty of ₹ 2,22,184, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") by the Assessing Officer which pertains to the assessment year 2009-10.

2. When the appeal was called for hearing neither the assessee nor any of the authorized representatives was present on behalf of the respondent 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 appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The assessee is an individual and is the proprietor of M/s. Sirabh Chemical and is trading in chemicals and solvents. The assessee filed its return of income on 25th September 2009, declaring total income of ₹ 2,90,170. The Assessing Officer processed 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, regarding suspicious parties who are indulged in accepting bogus purchase bills from the bogus hawala bill providers. As per the information received, the name of the assessee also appeared as one of the beneficiaries of such bogus purchase bills during the previous year relevant to the assessment year under consideration. Accordingly, it was construed by the Assessing Officer that the income to the extent of purchase from 14 parties to the tune of ₹ 7,30,070, has escaped assessment within the meaning of section 147 of the Act, which resulted in re-opening of the case. Upon issuance of notice under section 148 of the Act, the assessee requested for treating the return of income filed on 25th September 2009 as return of income filed in response to the notice under section,

148 of the Act. In view of the aforesaid, the assessee was asked to furnish material evidences in support of the purchases made from 14 parties to prove their genuineness. In response, the assessee provided explanation in writing along with the other documentary evidences viz. copy of purchase bills, bank statement marking their payment to the parties, copy of ledger account, purchase bills, etc. The assessee specifically submitted that to buy peace and to avoid litigation the addition may be made on the basis of gross profit ratio only. The Assessing Officer did considered the submissions of the assessee, however, was not satisfied with the submissions. Consequently, the Assessing Officer relying upon certain judicial pronouncements was of the opinion that it will serve the purpose of law and it would be fair and just if the gross profit @ 12.5% is taken on such hawala purchases of ₹ 58,76,446, made during the year under consideration and the profit to that extent is added back to the income of the assessee for the year under consideration. The Assessing Officer having regard to the decision of the Hon'ble Gujarat High Court in Simit P. Sheth, [2013] 356 ITR 451 (Guj.), he made addition of ₹ 7,34,556 (being 12.5% of ₹ 58,76,446. Penalty proceedings were also initiated under section 271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income vide order dated 27th August 2015, imposing penalty on ₹ 7,34,556, sought to be evaded which worked out to ₹ 2,22,184. The assessee being aggrieved filed appeal before,

the first appellate authority for contesting imposition of penalty under section 271(1)(c) of the Act levied on account of addition made for bogus purchase under section 69C of the Act.

4. The learned CIT(A) confirmed the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act by observing as under:-

"2. Decision: The AO made an addition of Rs. 7,34,556/- on account of alleged bogus purchases at 12.5% of Rs. 58,76,446/- . The appellant has not contested the assessment accepting the addition made by the AO latter on the AO initiated penalty proceedings u/s. 271(1)(c) of the IT Act and levied the same at Rs. 2,22,184/- the appellant filed appeal against the penalty order on the ground that is only an estimated addition of gross profit on the alleged bogus purchases amount into Rs. 58,76,446/- as unexplained expenditure u/s. 69C of the IT Act. The AR of the appellant argued that the addition made by the AO is on ad-hoc addition so they cannot be any penalty attractive.

Keeping in view of the alleged bogus purchases as well as assessee being a defaulter to sales tax department / VAT, the appellant could not prove the genuineness of purchases before the A.O. The assessee indulged hawala purchases and beneficiary out of such transaction, the A.O. has made the addition as well as penalty u/s 271(1)(c) of the IT Act. Since the appellant indulged hawala trading which is illegitimate and illegal hence penalty levied by the Assessing Officer at ₹ 2,22,184 is hereby confirmed. Thus, all the grounds of appeal fil by the dismissed."

5. 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 ad-hoc 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. 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.

7. In the result, assessee's appeal is 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