

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

**BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT AND
SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER**

**ITA No. 469/MUM/2020
Assessment Year: 2009-10**

ACIT-28(2), Room No. 307, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vashi, Navi Mumbai - 400703	Vs.	M/s Lucid Prints, Plot No. A-227, T.T.C, Industrial Area, Mahape, Navi Mumbai - 400710 PAN: AAFL0710G
(Appellant)		(Respondent)

Revenue by : Shri Brajendra Kumar (DR)
Assessee by : None

Date of Hearing: 22/07/2021
Date of Pronouncement: 06/08/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against order dated 19.11.2019 of learned Commissioner of Income Tax (Appeals)-26, Mumbai deleting the penalty imposed of Rs. 5,50,000/- under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2009-10.

2. When the appeal was taken up 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 learned Departmental Representative and based on materials on record.

3. Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, the assessee filed its return of income on 30.09.2009 declaring total income of Rs. 26,30,966/-. 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. 49,40,988/- 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, the Assessing Officer was not convinced, Thus, he treated the purchases as non genuine. However, instead of disallowing the entire purchases, alleged to be non genuine, he disallowed an amount of Rs.17,78,756/-, being 36% of such purchases. 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 12.5%. 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.5,50,000/- alleging furnishing of inaccurate particulars 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, both, the AO and learned Commissioner (Appeals) have disallowed part of the purchases, alleged to be non genuine by estimating the profit element embedded in such purchases. 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 furnished inaccurate particulars of income. That being the case, learned Commissioner (Appeals) was justified in deleting the penalty imposed under section 271(1)(c) of the Act. Therefore, we uphold the order of learned Commissioner (Appeals).

6. In the result, appeal is dismissed.

Order pronounced in the open court on 6th August, 2021.

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 06/08/2021

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