

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 6087/Mum/2019 (Assessment Year 2010-11)

ACIT-12(3)(2) Room No.128H, 1 st Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	Mudrika Labels Pvt.Ltd Gala No.18, Nirman Ind.Estate, Chincholi Bunder, Link Road Malad(West) Mumbai-400 064 PAN : AABCM5217D
(Appellant)		(Respondent)

Assessee by	Shri Bharat Shah
Department by	Shri Manoj Kumar Singh
Date of Hearing	26.08.2021
Date of Pronouncement	30.08.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A)-20 dated 19.06.2019 and pertains to Assessment Year 2010-11.

2. The grounds of appeal read as under :

1. "On the facts and in the circumstances of the case, the Ld.CIT(A) erred in deleting the penalty levied by the AO u/s.271(1)(c) of the Income-tax Act, 1961 of Rs.68,550/- without appreciating the facts that the assessee claimed bogus purchases in its Return of Income and thus concealed its particulars of income within the meaning of section 271(1)(c) of the Income-tax Act, 1961".

2. On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDTs Circular No. 17/2019 dated 08.08.2019 read with circular No.3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities.

3. The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

3. Brief facts of the case are that the assessee filed its return of income for AY 2010-11 on 31.08.2010 declaring total income at Rs. 83,77,754/-. The return was taken up for scrutiny and assessment order u/s. 143(3) of the Act was passed on 28.02.2013 determining the total income of the appellant of Rs. 96,86,290/-. Subsequently the AO received information that the appellant and the scheme of purchases. On the basis of the information, the assessment was reopened u/s. 147 of the Act and a notice dated 30.03.2013 was issued u/s. 148 of the Act. Eventually an assessment order u/s. 143(3) r.w.s. 147 of the Act was passed determining the total income of the appellant at Rs. 98,52,070/-.

Aggrieved by the assessment orders, the appellant filed appeal against the orders before the CIT (A). The CIT appeal restricted the disallowance to 12.5% of the total purchases held to bogus by the AO in the assessment orders on estimated basis. Thus, the total disallowance was restricted Rs.1,75,765/-. Penalty u/s. 271(1)(c) was also levied upon this.

4. Upon assessee's appeal Ld.CIT(A) deleted the penalty on the ground that penalty cannot be levied on estimated addition.

5. Against the above order, revenue is in appeal before us.

6. We have heard both the parties and perused the records. As clear from the facts recorded above, the disallowances has been made on an estimated basis on account of the non production of suppliers before the AO. 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 u.s 271(1)(c). 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 Hon'ble Supreme Court in the case of the State of Orissa 82 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.

7. 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.

8. In the background of aforesaid discussion and precedent we uphold the order's of Ld.CIT(A) and delete the levy of penalty.

9. In the result, revenue's appeal is dismissed.

Pronounced in the open court on 30 .08.2021

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 30 /08/2021

Sr.PS. Thirumalesh

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai