

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.666/Mum/2020  
(Assessment year 2009-10)

|   |    |                      |
|---|----|----------------------|
| Mohammed Rizwan Mohd. Kallan<br>Hanuman Nagar, Ekta Chawl<br>Committee, M/s Fahid Enterprises,<br>Ashok Nagar, Hill No.3, Kamani<br>Kurla (W), Mumbai 400 070<br>PAN : AGJPK2270K | vs | ITO 26(2)(3), Mumbai |
| <b>APPELLANT</b>  |    | <b>RESPONDENT</b>    |

|               |                         |
|---------------|-------------------------|
| Appellant by  | None                    |
| Respondent by | Shri Bharat Andhale, DR |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 30-08-2021 |
| Date of pronouncement | 09-09-2021 |

**ORDER**

**Per Saktijit Dey, JM**

This is an appeal by the assessee against order dated 31.10.2019 of learned Commissioner of Income Tax (Appeals)-38, Mumbai confirming penalty imposed of Rs.12,51,540/- 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, none appeared on behalf of the assessee. Considering the nature of dispute, we proceed to 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 an individual and stated to be a trader in lubricant oil. For the assessment year under dispute, the assessee filed his return of income on 30-08-2009 declaring total income of Rs.7,56,296/-. Subsequently, the assessing officer received information from the Sales tax authorities through the DGIT(Inv), Mumbai that purchases worth Rs.2,91,36,808/- claimed to have been made during the year from twelve parties are non genuine. Based on such information, the assessing officer reopened the assessment under section 147 of the Act. In course of assessment proceedings, the assessing officer called upon the assessee to prove the genuineness of purchases. Though, the assessee furnished some documentary evidences to prove the purchases; however, they were not to the satisfaction of the assessing officer. Thus, ultimately, the assessing officer held that the purchases are non genuine. However, considering the fact that the assessee has furnished the details of sales and purchases, the assessing officer restricted the addition to the profit element estimated at 12.5%. In other words, he made an addition of Rs.36,42,101/-. Based on such addition, the assessing officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs.12,51,540/- alleging concealment of income. The penalty so imposed was confirmed by learned Commissioner (Appeals).

4. We have considered the submissions of learned departmental representative and perused materials on record. It is evident, certain purchases made by the assessee during the year were treated as non genuine based on certain information received from sales-tax authorities. However, it is a fact on

record that in course of assessment proceedings, the assessee had furnished some evidences regarding the purchases. Further, the assessee has also furnished the quantitative details of sales and purchases. In fact, the assessing officer has also accepted the fact that the disputed goods were purchased by the assessee and utilized for sale. For this reason alone, instead of disallowing the entire purchases, the assessing officer has disallowed the profit element embedded in such disputed purchases by estimating at 12.5%. Thus, the doubt, if any, is not with regard to the purchases *per se*, but only with regard to the source of purchases. The inability of the assessee to prove the source of purchases could be for various factors including the non availability of the concerned parties. However, that by itself, cannot be a reason to conclude that the assessee has concealed his income within the meaning of section 271(1)(c) of the Act. In any case of the matter, ultimately, the addition based on which penalty under section 271(1)(c) was imposed, was made purely on estimate basis. That being the case, no penalty under section 271(1)(c) of the Act can be imposed on such estimated addition. In view of the aforesaid, we delete the penalty imposed of Rs.12,51,540/- under section 271(1)(c) of the Act.

5. In the result, appeal is allowed.

Order pronounced on 09/09/2021.

Sd/-

sd/-

|                          |                        |
|--------------------------|------------------------|
| <b>(RAJESH KUMAR)</b>    | <b>(SAKTIJIT DEY)</b>  |
| <b>ACCOUNTANT MEMBER</b> | <b>JUDICIAL MEMBER</b> |

Mumbai, Dt : 09/09/2021

Pavanan

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1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai