

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.677/MUM/2020
(Assessment Year: 2009-10)**

Shri Balkrishna Abaji Rane (HUF)
5-B, Arun, 278, Mogal Lane,
Mahim, Mumbai – 400 016

Vs. ITO-21(1)(2)
Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai – 400 020

PAN No. AAH7531B

(Assessee)

(Revenue)

Assessee by : None
Revenue by : Shri KPRR Murty, D.R

Date of Hearing : 04/10/2021
Date of pronouncement : 08/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-48, Mumbai, dated 06.08.2018, which in turn arises from the order passed by the A.O u/s 271(1)(c) of the Income-tax Act, 1961 (for short "Act"), dated 20.08.2015 for A.Y 2009 -10. The assessee has assailed the impugned order on the following grounds before us:

- "1. On the facts and circumstances of the case and in law, the Learned CIT(A) grossly erred in confirming the action of the Income Tax Officer, Ward 21(1)(2), Mumbai ("the AO") of imposing penalty for furnishing inaccurate particulars of income in respect of purchases u/s. 271(1)(c) ignoring the fact that the Appellant had already disclosed the said particulars of income.
2. On the facts and circumstances and in law, the Learned CIT(A) erred in confirming the action of the AO of imposing penalty of Rs.1,04,443/- by applying

explanation u/s. 271(l)(c) of the Act for furnishing inaccurate particulars of income and by ignoring related legal decision cited by the Appellant.

3. The Appellant prays that the addition of Rs.3,07,273/- made out of purchases and penalty thereon of Rs.1,04,443/- imposed u/s. 271(1)(c) for furnishing inaccurate particulars be deleted.
4. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above Grounds of Appeal.”

2. Briefly stated, the assessee who is engaged in the business of manufacturing and maintenance of electrical furnaces had filed his return of income for A.Y 2009-10 on 30.09.2009, declaring a total income of Rs.14,97,160/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, on the basis of information received from the DGIT(Inv), Mumbai, that the assessee as a beneficiary had procured accommodation bills without any actual delivery of goods his case was reopened u/s 147 of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have made purchases of Rs.13,96,695/- from the following 5 parties:

Sr. No.	Name of the party have issued bogus bills to the assessee	Amount of such bogus bills (Rs.)
1.	SWASTIK ENTERPRISES	3,19,467
2.	M.R. CORPORATION	2,26,512
3.	SHRADHHA TRADING COMPANY	3,14,735
4.	SIDDHI ENTERPRISES	2,48,976
5.	RUSHABH ENTERPRISE	2,87,005
	TOTAL	13,96,695

As the assessee had failed to substantiate the genuineness and veracity of the aforesaid purchase transactions on the basis of clinching documentary evidence to the satisfaction of the A.O, therefore, the latter had dubbed the same as unproved/bogus purchases. Backed by his aforesaid observations the A.O disallowed 22% of the value of the impugned purchases and made an addition of

Rs.3,07,273/- in the hands of the assessee. At the time of culminating the assessment the A.O also initiated penalty proceedings u/s 271(1)(c) of the Act.

4. Thereafter, the A.O vide his order passed u/s 271(1)(c), dated 20.08.2015 imposed a penalty of Rs.1,04,443/-.

5. Aggrieved, the assessee assailed the penalty imposed by the A.O u/s 271(1)(c) of the Act before the CIT(A). However, the CIT(A) not finding favor with the contentions advanced by the assessee upheld the order of the A.O and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of the appeal had failed to put up an appearance before us, therefore, we are constrained to proceed with and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963 i.e after hearing the respondent revenue and perusing the orders of the lower authorities.

7. The Ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have heard the Id. D.R and perused the orders of the lower authorities. Admittedly, as the assessee had failed to prove the authenticity of the impugned purchase transactions, therefore, the A.O had on an estimate basis made an addition of 22% of the value of such unproved purchases. Further, on a perusal of the orders of the lower authorities, it emerges that the A.O had declined to accept the genuineness and veracity of the purchase transactions under consideration, for the reason, that the documentary evidence produced by the assessee to substantiate the same were not found by him to his satisfaction. As is discernible from the records, the addition made by the A.O on an estimate basis is merely backed by an unproved claim of the assessee and not a claim

which was disproved on the basis of irrefutable documentary evidence by the revenue. In our considered view though unproved purchases would justify an addition in the hands of an assessee, however, no penalty under Sec. 271(1)(c) merely on the said standalone basis can validly be imposed. We find that our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Upendra V. Mithani (ITA (L) No. 1860 of 2009), dated 05.08.2009 wherein it was observed as under:-

“The issue involved in the appeal revolves around deletion of penalty under Section 271(1)(c) of the I.T. Act. The Tribunal has concurred with the view taken by the Commissioner of Income Tax (A). The Commissioner of Income Tax (A) has rightly taken a view that no penalty can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. If the assessee gives an explanation which is unproved but not disproved, i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false. The view taken by the Tribunal is a reasonable and possible view. The appeal is without any substance. The same is dismissed in limine with no order as to costs.”

Admittedly, the assessee in the case before us had failed to substantiate the genuineness and veracity of the impugned purchases on the basis of clinching evidence to the satisfaction of the A.O. However, we cannot remain oblivious of the fact that as the assessee had evidenced the purchase transactions under consideration by placing on record certain documents, viz. invoices, ledger accounts of parties, bank statements etc., the authenticity of which had not been dislodged or disproved by the lower authorities, therefore, the said fact in itself takes the case of the assessee beyond the realm of the penal provisions contemplated under Section 271(1)(c) of the Act. Our aforesaid conviction is further fortified by the order of the Hon'ble Supreme Court wherein the 'Special leave Petition' (SLP) filed by the revenue in the case of CIT-2 Lucknow Vs. U.P State Bridge Corporation Ltd. (SLP) (Civil) (2018) 97 Taxman.com 279 (SC) was dismissed and the order of the Hon'ble High Court of Allahabad was upheld. In the aforesaid case, the High Court had observed that where a claim of expenditure is neither found inaccurate nor could be viewed as concealment of

income on the part of the assessee, then, merely because the said claim was not accepted or acceptable to the revenue by itself would not attract penalty under Sec. 271(1)(c) of the Act. Now, in the case before us, as the revenue had failed to disprove on the basis of clinching documentary evidence the claim of the assessee of having made purchases from the aforementioned parties, therefore, merely on the basis of his unproved claim of purchases no penalty under Sec. 271(1)(c) could have validly been imposed. We, thus, not being able to persuade ourselves to subscribe to the observations of the lower authorities quash the penalty of Rs. 1,04,443/- imposed by the A.O. The order of the CIT(A) upholding the levy of penalty under 271(1)(c) is set-aside in terms of our aforesaid observations.

9. Resultantly, the appeal of the assessee is allowed.

Order pronounced in the open court on 08.10.2021

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 08.10.2021

*PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai