

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI
BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1735/MUM/2020
(Assessment Year: 2011-12)**

NarpatKumar D. Chandan
Pavan Metal Corporation
55/B Nanubhai Desai Road,
Opp. Islampura Street
Mumbai -400 004

The Income Tax Officer,
Vs. Ward 19(2)(4),
Room No. 217, 2nd Floor,
Matru Mandir, Tardeo Road,
Mumbai – 400 007

PAN No. AAAPC6295M

(Assessee)

(Revenue)

Assessee by : Shri Rajesh Chamaria, A.R
Revenue by : Shri C.T. Mathews, D.R

Date of Hearing : 25/10/2021
Date of pronouncement : 02/11/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-18, Mumbai, dated 20.01.2020, 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 30.05.2017 for A.Y. 2011-12. The assessee has assailed the impugned order on the following grounds before us:

1. On the facts and in law, the Ld. CIT (A) erred in confirming levy of penalty u/s 271(1)(c) of the Income Tax Act on additions made on estimate basis.
 2. On the facts and in law, the Ld. CIT (A) erred in confirming levy of penalty u/s 271(1)(c) of the Income Tax Act on additions made on the basis of quantum order although the same was drastically reduced by Ld. CIT (A).
 3. Appellant prays for leave to add, amend or delete any ground/s of appeal on or before the final date of hearing.
2. Briefly stated, the assessee had filed his return of income for A.Y. 2011-12 on 17.09.2011, declaring a total income of Rs.8,39,357/-. Subsequently, on the

basis of information received from the DGIT(Inv.), Mumbai, that the assessee as a beneficiary had obtained accommodation bills from certain hawala parties, 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.6,83,280/-, from the following two tainted parties:

TIN	Hawala Party/Arties	PAN	F.Y.	Amount in Rs.
27620782300V	Rainbow Steel Impex	AAMFR0789H	2010-11	214,032
27250801661V	Aviva Tradelink Private Limited	AAICA8049E	2010-11	469,248
			Total	6,83,280

In order to verify the genuineness and veracity of the purchases claimed by the assessee to have been made from the aforementioned parties the A.O called upon him to furnish supporting documentary evidence. However, the assessee despite sufficient opportunity failed to cooperate in the course of the proceedings and did not place on record any material which would substantiate the authenticity of the impugned purchase transactions. Backed by the aforesaid facts, the A.O was constrained to frame the assessment vide an ex-parte order u/s 144 r.w.s 147, dated 30.11.2016, wherein he added the impugned purchases to the returned income of the assessee and assessed his income at Rs.15,22,640/-.

4. After the culmination of the assessment proceedings, the A.O vide his order u/s 271(1)(c) of the Act, dated 30.05.2017 imposed penalty of Rs.2,11,134/- on the assessee for furnishing of inaccurate particulars of income qua the aforesaid impugned purchases.

5. Aggrieved, the assessee assailed the penalty imposed by the A.O u/s 271(1)(c) before the CIT(A). However, the CIT(A) did not find favour with the contentions advanced by the assessee and upheld the penalty order of the A.O.

6. In the meantime, the quantum appeal filed by the assessee before the CIT(A) was disposed off vide the latter's order dated 28.02.2019, wherein the impugned purchases made by the A.O. were scaled down by the said first appellate authority to 12.5% of the value of the impugned purchases.

7. On further appeal, the Tribunal vide its order passed in ITA No. 3099/Mum/2019, dated 15.09.2020 upheld the order passed by the CIT(A) while disposing off the quantum appeal of the assessee.

8. The assessee being aggrieved with the order of the CIT(A) upholding the penalty imposed by the A.O. u/s 271(1)(c) has carried the matter in appeal before us. It was submitted by the Id. A.R. that as the addition made w.r.t. the impugned purchases had been scaled down by the appellate authorities on an estimate basis to @ 12.5% of the value of the impugned purchases, therefore, no penalty u/s 271(1)(c) was maintainable as regards such estimated addition.

9. Per contra, the Id. Departmental Representative (for short 'D.R.') relied on the orders of the lower authorities.

10. We have heard the Id. Authorized Representatives for both the parties, and perused the orders of the lower authorities. Admittedly, it is a matter of fact borne from the records that the quantum addition w.r.t. the impugned purchases pursuant to the orders of the appellate authorities had been sustained on an estimate basis i.e. @ 12.5% of their aggregate value. As stated by the Id. A.R., and rightly so, as the addition in question so made in the hands of the assessee is merely backed by a process of estimation and not any irrefutable documentary evidence which would prove to the hilt that the assessee had not made any genuine purchases from the aforementioned parties in question, therefore, though the failure on the part of the assessee to substantiate the authenticity of the impugned purchases would justify an addition in his hands, however, the same in our considered view by no means justifies levy of penalty on him u/s 271(1)(c) of the Act. Our aforesaid conviction is supported by the judgment of the

Hon'ble High Court of Bombay in **CIT Vs. Upendra V. Mithani [ITA (L) NO.1860 OF2009, dated 05.08.2009]**, wherein the High Court had concurred with the view taken by the Tribunal that 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, then no penalty u/s 271(1)(c) could be imposed. It was observed by the Hon'ble High Court as under:

The Commissioner of Income Tax (A) has rightly taken a view that no penalty can 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."

We, thus, in the backdrop of our aforesaid deliberations are of a strong conviction that in the absence of any irrefutable material evidencing the falsity of the assessee's claim of having made purchases from the aforementioned parties, there was no justification on the part of the A.O to have levied penalty u/s 271(1)(c) of the Act. Accordingly, on the basis of our aforesaid observations we vacate the penalty imposed/sustained by the lower authorities u/s 271(1)(c) of the Act.

11. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 02.11.2020

Sd/-

(Pramod Kumar)
VICE PRESIDENT

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 02.11.2021

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