

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1461/Mum/2020
(Assessment Year 2011-12)

Dattatray Asscoiates Shubham Complex Gauripada Road, Kalyan(W) 101-Madhav Baug Apt. Op. Bank of Maharashtra Gaushala Road, Shivaji Path Kalyan(W)-421 301 PAN : AAFFD7906B (Appellant)	Vs.	CIT(A)-1 Room No.29 A-Wing, 6 th Floor Ashar IT Park, Wagle Industrial Estate Thane-400 604 (Respondent)
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Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	14.12.2021
Date of Pronouncement	14 .12.2021

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-1, dated 04.02.2020 and pertains to assessment year 2011-12, wherein penalty levied under section 271(1)(c) for an amount of Rs. 3,79,280/- has been confirmed.

2. Brief facts of the case leading to the levy of penalty are as under:-

The assessee is engaged in business of builders and developers and follows percentage completion method. In this case the assessee had declared WIP of Rs 4,09,15,211/- on which gross profit was declared at Rs 25,37,800/- (6%) and NP of Rs 6,62,366/- (2%). The AO noticed that the NP declared by the assessee was less as compared to NP of 5% to 7% declared by other assessee's in similar trade. On being confronted, the assessee offered 12,27,456/- and requested not to initiate penalty

proceedings u/s 271(1)(c) of the Act. As agreed by the assessee, the AO added an amount of Rs 12,27,456/- to the income of the assessee. From the facts of the case it was clear that the assessee had suppressed the net profit and offered the said income only after being confronted during the course of scrutiny proceedings, the AO, therefore, also initiated penalty proceedings by issue of notice u/s 274 r.w.s. 271(1)(c) of the Act for concealment of income by furnishing inaccurate particulars of income.

3. Upon the above facts penalty was levied and confirmed by the Ld.CIT(A).

4. Against this order assessee has filed appeal.

5. I have heard the Ld. DR and perused the records. I find that the addition in this case has been solely made on the basis that in the opinion of AO, the profit declared by the assessee is low as compared to profit declared by others in the same industry. There is not a whisper of any finding that there is any shortcoming in the books of account or the accounts maintained by the assessee. No concealment of particulars by the assessee has been noted. Nor any furnishing of inaccurate particulars has been pointed out. Just because, assessee has agreed to estimated disallowance that cannot ipso facto fasten the assessee the rigours of penalty under section 271(1)(c) of the Act. It is settled law that there has to be a finding of concealment or furnishing of inaccurate particulars of income before any penalty under section 271(1)(c) can be levied. In the facts of the present case, I find that assessee is not guilty of any such conduct. The assessee's conduct is also not contumacious to warrant levy of penalty. In this regard, I draw support from the decision of Hon'ble Supreme Court in the case of State of Orissa 82 ITR 26 for the proposition that the authority may not levy penalty, if the conduct of the assessee is not contumacious. In the background of aforesaid discussion and precedent, I set aside the orders of authorities below and delete the penalty.

6. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 14 .12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14 /12/2021

Thirumalesh, Sr.PS

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