

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No.331 & 333/Mum/2021
(Assessment Years 2009-10 & 2010-11)

ITO-22(2)(1) 312, 3 rd Floor Piramal Chambers Lal Baug, Parel Mumbai-400 012	Vs.	Nilesh K Parikh 505, Ankur Building K G Marg, Prabhadevi Mumbai-400 025 PAN : AAJPP2095F
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri C.T.Mathews
Date of Hearing	03.02.2022
Date of Pronouncement	09.02.2022

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the revenue against respective orders of the learned Commissioner of Income Tax (Appeals), for the concerned assessment years. The common issue raised is that Id.CIT(A) erred in deleting the levy of penalty u/s. 271(1)(c) with regard to addition of bogus purchase for the following amounts.

A.Y	Penalty (Rs.)
2009-10	Rs. 1,15,334/-
2010-11	Rs. 3,70,946/-

2. Since facts are similar, we are referring to AY 2009-10 for facts and figures

3. Brief facts of the case are that AO has made 100% addition from bogus purchase on account of information from sales tax department that assessee has engaged into bogus purchases. Notice given u/s. 133(6) to the parties was returned un-served. AO made the addition of 100% purchase in order u/s. 144 of the Act. In penalty proceeding also ex-parte order was passed levying penalty on the tax sought to be evaded. In quantum, the Id.CIT(A) reduced the addition to 25% from 100%. Since Id.CIT(A) in quantum had granted 75% relief in the quantum, the Id.CIT(A) in penalty appeal held that penalty cannot be levied on the addition of Rs. 2,25,117/-, which has been deleted. Ld.CIT(A) further held that penalty cannot be levied on the remaining addition of Rs.75,039/- also. As there is no competent and positive finding beyond doubt that the appellant had not purchased the goods from these parties. Hence, he deleted the entire penalty.

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

5. We have heard the Id. DR and perused the records. We find that in this case disallowances were made on estimate basis on account of non response from the suppliers before the AO. We note that sales have not been doubted. In these facts, it is to be seen whether the penalty can be sustained on the addition sustained by the Id.CIT(A) i.e 25% of the purchases. We note that since addition has been made without doubting the sales, the entire addition itself in such cases had been deleted in the case of Nikunj Eximp Enterprises in writ petition no 2860 ,order dt 18.6.2014 by Hon'ble Bombay High Court. Moreover, on the facts and circumstances of the case, in our considered opinion, assessee cannot be visited with the rigors of penalty u/s. 271(1)(c) of the Act. 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. In the present case, in our considered

opinion, the conduct of the assessee is not contumacious in order to levy the penalty. Hence, we do not find any infirmity in the order of Id.CIT(A).

6. Before parting, we may add that tax effect in this case is below the limit fixed by CBDT for filing appeals before ITAT. The revenue in the grounds has taken a stand that since the appeal is based upon information from sales tax authority that is an outside agency, the appeals falls in the exception carved out in the CBDT circular. We note that penalty is levied on the order of the AO, who is an officer of the department itself. If the department contends that penalty has been levied on outside information, the penalty levied will have no legs to stand.

7. Accordingly, these appeals by the revenue stand dismissed.

Pronounced in the open court on 09 .02.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 09 /02/2022
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai