

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

I.T.A. Nos. 271 to 273/Mum/2021  
(Assessment Years : 2009-10, 2010-11 & 2011-12)

SNT Controls Ltd. B-9, Nandjyot Indl Estate, Safed Pool Andheri Kurla Road Andheri(E) Mumbai-400 072  PAN : AADCS8781N (Appellant)	Vs.	CIT(A)-18 Mumbai-400 021    (Respondent)
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Assessee by	Shri Kalpesh Turalkar
Department by	Shri C.T.Mathews, Sr.AR
Date of Hearing	08.03.2022
Date of Pronouncement	09.03.2022

ORDER

Per Shri Shamim Yahya(A.M) :-

These are assessee's appeals directed against respective orders of learned CIT(A) for respective assessment years, wherein following penalty levied under section 271(1)(c) of the Act has been sustained:-

A.Y.	Amount (Rs.) of Penalty
2009-10	Rs. 83,253/-
2010-11	Rs. 8,114/-
2011-12	Rs.1,09,305/-

2. At the outset, it is noted that there is a delay of 309 days. The reason for the same is attributed to the covid pandemic. Ld. Counsel submits that as per the order of Hon'ble Supreme Court such period is to be ignored. Upon careful consideration and hearing both parties, the delay is condoned.

3. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed off together for the sake of convenience.
4. Brief facts of the case leading to the levy of penalty are that the AO in these cases made disallowance of 100% on account of bogus purchases. Assessee has supplied the purchase vouchers and the payment, where shown to have been made by banking channel. However, drawing the adverse inference for the non-production of the suppliers the AO disallowed 100% of the bogus purchases. However, the AO did not doubt the sales. The Id.CIT(A) restricted the addition to 12% and gave further relief of 4% VAT paid. Penalty under section 271(1)(c) was also levied. Ld.CIT(A) sustained the penalty.
5. Against the above order assessee is in appeal before us.
6. We have heard the Ld. DR and perused the record. As clear from the facts recorded above, the disallowance has been made on an estimated basis on account of the non production of suppliers before the AO. The purchase vouchers were duly produced and the payments were through banking channel. In these backgrounds, in our considered opinion, assessee cannot be visited with the rigours of penalty u.s 271(1)(c). As a matter of fact, on many occasions, on similar circumstances in quantum proceedings, the disallowance itself has been deleted. In our considered opinion, on the facts and circumstances of the case assessee cannot be said to have been guilty of concealment or furnishing of inaccurate particulars of income. 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.

7. In the background of aforesaid discussion and precedent we set aside the order's of Ld.CIT(A) and delete the levy of penalty.

8. In the result, these assessee's appeals are allowed.

Pronounced in the open court on 09.03.2022

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 09/03/2022

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