

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2548/Mum./2023

(Assessment Year : 2011-12)

Income Tax Officer
Ward-26(2)(1), Mumbai

..... Appellant

v/s

Saraswati Wire And Cable Industries
19, Sugar Manjil, 1st Floor
103/105, Sherif Deviji Street
Mumbai 400 003 PAN – AAKFS5821R

..... Respondent

Assessee by : None

Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 29/02/2024

Date of Order – 20/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 20/05/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12, which in turn arose from the penalty order dated 03/01/2022 passed under section 271(1)(c) of the Act.

2. The only grievance of the Revenue is against the deletion of penalty levied under section 271(1)(c) of the Act.

3. During the hearing, no one appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceed to decide this appeal ex-parte qua the assessee after hearing the submissions of the learned Departmental Representative ("*learned DR*") and the material available on record.

4. We have considered the submissions of the learned DR and perused the material available on record. During the year under consideration, the assessee had shown purchases of Rs.23,40,260 from various parties. Vide assessment order passed under section 143(3) of the Act, the Assessing Officer ("*AO*"), in the absence of sufficient material to prove the genuineness of the purchases, made the addition of 12.5% of the total purchases. Meanwhile, penalty proceedings under section 271(1)(c) of the Act were initiated separately. After considering the submissions of the assessee the AO vide order dated 03/01/2022 passed under section 271(1)(c) of the Act levied a penalty of Rs.1,41,020.

5. We find that the learned CIT(A), vide impugned order, by following the decision of the coordinate bench of the Tribunal in Mukesh Shaligram Sharda v/s ITO, in ITAs no. 1907 and 1908/Mum./2021, for the assessment year 2019-20, deleted the penalty levied by the AO. The relevant findings of the learned CIT(A) are as under:-

"Decision:

2.3 I have carefully considered the grounds of appeal, assessment order and submission of the appellant. In this case addition has been made on estimate basis on bogus purchases. Similar issue has come up before ITAT, Mumbai in the case of Mukesh Shaligram Sharda vs ITO, ITA No.1907 & 1908/Mum/

2021, for AY 19-20, vide order dated 22.02.2023. Hon'ble ITAT has held as under.

"3. The fact in brief are that during the course of assessment proceedings, the Assessing Officer had disallowed 100% of purchases made through three

parties on the basis of the information received from the sales-tax department that those three parties were engaged in providing bills without supplying any good. However, the Ld.CIT(A) has estimated the quantum addition to the extent of 12.5% of purchases. Thereafter, the Assessing Officer has levied penalty of Rs.8,13,793/- under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The assessee filed appeal before the Ld.CIT(A) against levying penalty. However, the Ld.CIT(A) has dismissed the appeal the appeals of the assessee.

4. Heard both the sides and perused the materials on record. It is undisputed fact that impugned penalty was levied only on estimated addition. The Assessing Officer had made addition of entire bogus purchases, however, did not doubt the sales made against such purchases. We observe that the Tribunals in various decisions have held that where sales are not disputed, entire alleged bogus purchases cannot be disallowed and only the gross profit on the alleged purchases to be disallowed. After taking into consideration the various decisions of the Tribunal that no penalty under section 271(1)(c) is leviable on estimated additions and also after taking into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Krishi Tyre Retreading & Rubber Industries 360 ITR 580; the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Sangrur Vanaspati Mills Ltd 303 ITR 53 (P&H); and the decision of Hon'ble Gujarat High Court in the case of CIT vs Subhsh Trading Co Ltd 221 ITR 110 (Guj), we direct the Assessing Officer to delete the impugned penalty levied on estimated addition. Therefore, the appeal of the assessee is allowed."

The facts in this case are similar. Respectfully following the order of jurisdictional ITAT, the penalty levied in this case is deleted in full. Other issues raised by the appellant are not disposed off. Ground of appeals are treated as disposed off accordingly."

6. Since the findings of the learned CIT(A) are based on the decision of the coordinate bench of the Tribunal, we do not find any infirmity in the same. Accordingly, the impugned order deleting the penalty levied under section 271(1)(c) of the Act is upheld. As a result, grounds raised by the Revenue are dismissed.

7. In the result, the appeal by the Revenue is dismissed
Order pronounced in the open Court on 20/03/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/03/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai