

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND PAVAN KUMAR GADALE, JM

ITA No. 7505/Mum/2019
(Assessment Year: 2011-12)

DCIT-1(3)(2) 540, Aaykar Bhawan M.K.Road, Mumbai-400 020	Vs.	M/s. Toshvin Analytical Private Limited 103, S.J.House, Sitaram Mills Compound, N.M.Joshi Marg, Lower Parel(E) Mumbai-400 011
PAN/GIR No. AABCT4482D		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Vijay Kumar Menon
Respondent by	:	Shri Ruturaj H.Gurjar

Date of Hearing	:	08.06.2021
Date of Pronouncement	:	10.06.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Mumbai ('Id.CIT(A) for short) dated 04.09.2019 and pertains to the assessment year (A.Y.) 2011-12.

2. The grounds of appeal read as under:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(l)(c) of the I.T. Act, ignoring the enquiries made and factual details brought on record by the AO in his assessment, which led the AO to conclude that the assessee failed to discharge its onus to establish the genuineness of the purchases and identity of the parties from whom the assessee made purchases and hence, the AO established these to be non-genuine and levied penalty thereon".
2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(l)(c) of the I.T. Act, levied on the addition of Rs. 53,26,539/- made on account of bogus purchases which was upheld by the Ld. CIT(A) and subsequently restricted to Rs. 3,53,388/- by the Hon'ble ITAT against which the assessee has not filed any further appeal leading to the conclusion that the assessee has accepted the addition."
3. The issue arising out of the above appeal is the deletion of penalty u/s 271(1)(c) with respect to estimated addition for bogus purchase of Rs.3,53,388/-.

4. The brief facts of the case leading to the levy of penalty are as under:-

In this case, the assessee filed its return of income on 30.09.2011 declaring loss of Rs.11,81,98,172/-. The assessment was completed on 20.03.2014 determining total income of Rs.12,59,09,760/-. The AO made following additions to the total income and initiated penalty proceedings u/s 271(1)(c) of the Act.

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|------|----------------------------|----------------|
| i) | Bogus purchases | Rs.53,26,539/- |
| ii) | Disallowance u/s 14A | Rs.8,84,101/- |
| iii) | Foreign Education expenses | Rs.15,00,947/- |

Against this, the assessee preferred an appeal before CIT(A). The CIT(A) confirmed the addition on account of bogus purchases to the extent of Rs.6,65,817/-. The assessee was given relief of Rs.46,60,722/-. As regards the issue of foreign education expenses of Rs.15,00,947/-, the CIT(A) dismissed assessee's appeal. The AO then proceeded with penalty proceedings. During the course of penalty proceedings, the AO held that the assessee has furnished inaccurate particulars and thus concealed income to the extent of Rs.21,66,764/-. Therefore, AO levied a minimum penalty of Rs.7,22,182/- u/s 271(1)(c) of the Act.

5. Upon assessee appeal, the Ld.CIT(A) noted that, in appeal for addition, the Ld.CIT(A) has deleted the disallowances u/s 14A and ITAT has deleted the disallowances on account foreign education expense and as regards the bogus purchases ITAT has sustained addition only at Rs. 3,83,388/-. The Ld.CIT(A) held that the penalty remains only with reference to this bogus purchase additions. Referring to several decisions of ITAT on such situations and finding the addition only on estimated basis, the Ld.CIT(A) deleted the penalty.

6. Against this order revenue is in appeal before us.

7. We have heard both the parties and perused the records. As per facts recorded above, the penalty in this case is only with reference to addition on bogus purchases amounting to Rs.3,83,388/-. The addition was sustained by the ITAT @8% of the bogus purchases. We find that on the facts and circumstances of the case, the Ld.CIT(A) has passed a reasonable order. He has correctly deleted the penalty with reference to bogus purchase addition at Rs.3,83,388/-, as the addition was done on estimated basis.

8. We further note that tax effect in this case is below the limit fixed by CBDT for filing appeals before ITAT. The Revenue has tried to make out a case that since the addition was made pursuant to information from sales tax department, this penalty appeal falls in the exception carved out in the CBDT circular regarding appeals arising out of additions made pursuant to information from outside agencies. We are of the opinion that this plea is not tenable inasmuch as once revenue accepts that penalty is levied on outside agency information, the penalty levied will have no legs to stand.

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

10. In the result, revenue's appeal is dismissed.

Order pronounced in the open court on 10.06.2021

Sd/-

Sd/-

(Pavan Kumar Gadale)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 10.06.2021
Thirumalesh, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai