

IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 496/Mum/2018 for (Assessment Year 2009-10)

Elcon Pipe and Fittings Pvt. Ltd. B-8, Godown No.7, Prithvi Complex II, Pipe Line, Kalher, Bhiwandi-421302. PAN: AACFE1857D	Vs.	ITO-Ward-1(1), Mohan Plaza, Wayale Nagar, KhadakPada, Kalyan (West), Thane-421301.
Appellant		Respondent

Appellant by : Shri Ravindra Poojary (AR)

Respondent by : Shri Chaudhary Arun Kumar
Singh (DR)

Date of Hearing : 11.02.2019

Date of Pronouncement : 11.02.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of learned Commissioner (Appeals)-2, Pune dated 09.11.2017, which in turn arises from the penalty order passed by assessing officer under section 271(1)(c) dated 26.09.2014 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

“On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) - 2, Pune.

General:

1. erred in partly confirming the order of the Assessing Officer that your appellant has concealed the income.

Confirming the Penalty U/s 271(1)(c) on addition to the extent of 12.5% of the bogus purchases

2. failed to appreciate that there is no deliberate concealment of information or any furnishing of false particulars of income in your appellant's case. Therefore penalty imposed under section 271(1)(c) is bad in law.

3. erred in ignoring that assessment proceedings and concealment are different, merely because the information received from Sales tax Department regarding hawala purchases, it cannot be said there is a concealment.;

4. Failed to Appreciate that additions in the assessment order were made purely based on information received from sales tax department and without conducting any independent enquiry on his own.

5. The learned CIT (A) erred in confirming the order of assessing officer imposing penalty u/s. 271(1)(c) without appreciating that the penalty notice issued by him in this regard was defective.”

2. Brief facts of the case are that assessee is a private limited company, engaged in the business of trading of Pipe material. The assessment for the year under consideration was completed on 21.03.2014 under section 144 r.w.s. 147 of the Act. The Assessing Officer made the re-opening of the assessment on the basis of information received from Sales Tax Department, Government of Maharashtra that the assessee is one of the beneficiaries who has taken accommodation entries from hawala dealers. The assessee made purchases of Rs. 71,58,777/- from parties namely Maruti Steel Traders of Rs. 37,70,068/-, Shiv Industries of Rs. 14,57,315/- and Anupam Metal of Rs. 19,31,394/-. The name of the said parties was included in the list of hawala dealers. On the basis of information received by Assessing Officer, the Assessing Officer issued notice under section 148 dated 19.03.2013. The notice was not served upon the assessee; thereafter notice under section 143(2) and 141(1) was issued on 26.12.2013. The said

notice was also returned back to the Assessing Officer as recorded in para-3 of the assessment order. The Assessing Officer completed the assessment under section 144 r.w.s. 147 and disallowed the aggregate purchase of Rs. 71,58,777/-. On further appeal before the Id. CIT(A) the addition was sustained to the extent of Rs. 8,94,847/- (@ 12.5%) and balance of Rs. 62,63,930/- was deleted vide order dated 30.06.2016. On further appeal before the Tribunal, the disallowance was confirmed @ 12.5% of the bogus purchases vide ITA No. 5355/M/2015 & 5689/M/3016 dated 18.08.2017.

3. The Assessing Officer levied the penalty under section 271(1)(c) of the Act. The assessing officer levied the penalty @ 100% of tax sought to be evaded. In appeal against the penalty levied under section 271(1)(c), the Id. CIT(A) directed the Assessing Officer to restrict the levy of penalty to the extent of addition confirmed in the appeal. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
4. We have heard the submission of Id. Authorised Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee submits that the Assessing Officer passed the assessment order ex-parte and disallowed the entire purchases without giving any opportunity of hearing to the assessee. On appeal before the Tribunal the disallowance was restricted to 12.5% of the alleged bogus purchases. The Id. AR of the

assessee submits that it is settled law that no penalty is leviable on *ad hoc* disallowance. Therefore, the order of Id. CIT(A) in directing the Assessing Officer for restricting the penalty on the partial disallowance is also liable to be set-aside.

5. On the other hand, the Id. DR for the revenue supported the order of lower authorities below.
6. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have also deliberated on the various case laws referred and relied by lower authorities. We have noted that in appeal in quantum assessment, the co-ordinate bench of this Tribunal in cross appeal for Assessment Year 2009-10 & 2011-12 of both the parties, restricted the disallowance of alleged bogus purchases @ 12.5% of the alleged bogus purchases. It is settled legal position that no penalty under section 271(1)(c) is leviable on *ad hoc* disallowance. Considering the peculiar facts and circumstances of the case, we direct the Assessing Officer to delete the entire penalty levied under section 271(1)(c) of the Act.
7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11 /02/2019.

Sd/

SHAMIM YAHYA

ACCOUNTANT MEMBER

Mumbai, Date: 11 .02.2019

SK

Sd/-

PAWAN SINGH

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**