



ITA No.6617/M/2014
Earthmoving Equipment Service Corporation
Assessment Year-2010-11

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री शक्तिजीत दे ,न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI SAKTIJIT DEY, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.6617/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Earthmoving Equipment Service Corporation 613-614 Raikar Chambers Kooverji Devshi Marg Govandi Mumbai – 400 088	बनाम/ Vs.	Deputy Commissioner Of Income Tax 22(2) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAFE-1053-F		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

□ पीलार्थी की ओर से / Appellant by	:	Dr. K.Shivram & Ms. Neelam Jadhav, Ld.ARs
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Vishwas Mundhe, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	25/04/2017
घोषणा की तारीख / Date of Pronouncement	:	02 /05/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The Captioned appeal by assessee for Assessment Year [AY] 2010-11 assails the order of Ld. Commissioner of Income Tax (Appeals)-20 [CIT(A)], Mumbai dated 04/08/2014 *qua* confirmation of penalty u/s 271(1)(c) for Rs.12,94,147/-.

2. Facts leading to the dispute are that the assessee, being resident corporate assessee, was assessed u/s 143(3) at Rs.66,25,790/- vide Assessing Officer [AO] order dated 04/03/2013 after addition, *inter-alia*, of Rs.38,17,544/- on account of unexplained expenditure u/s 69C as against returned income of Rs.25,13,750/- *e-filed* by the assessee on 26/09/2010. The assessee was engaged in the business of *crane hiring and maintenance* and reflected turnover of Rs.5.04 crores. During Assessment proceedings, pursuant to information obtained from Sales Tax department, certain repair & maintenance items purchased by assessee from five suppliers was treated as bogus and added u/s 69C as unexplained expenditure as the assessee could not produce confirmation from alleged bogus supplier, This led to initiation of penalty u/s 271(1)(c) and consequently a notice u/s 274 was issued to the assessee which finally resulted into the imposition of impugned penalty vide AO penalty order dated 25/09/2013. The same was contested without any success before Ld. CIT(A) vide impugned order dated 04/08/2014 , against which the assessee is in appeal before us.



3. The Ld. Counsel for assessee, *Dr. K. Shivram*, while drawing our attention to the document placed in the *paper book*, assailed penalty order on legal grounds as well as on merits by contending that the show cause notice issued u/s 274 was defective as the relevant clause as applicable to the case of the assessee was not appropriately marked and no specific charge was mentioned therein for which the penalty was being initiated by the Ld. AO and hence it has resulted into taking away assessee's valuable right of contesting the same and therefore, the penalty proceedings stands vitiated. Reliance was placed on judicial pronouncements rendered by Apex Court in *CIT Vs. SSA'S Emerald Meadows [73 taxmann.com 248]* & Jurisdictional Hon'ble Bombay High Court in *CIT Vs. Samson Perinchery [ITA No. 1154 of 2014 05/01/2017]* & Hon'ble Karnataka High Court in *CIT Vs. Manjunatha Cotton & Ginning Factory [359 ITR 565]* & Mumbai Tribunal in *Wadhwa Estate & Developers Vs. ACIT [ITA NO. 2158/Mum/2016 dated 24/02/2017]*.

4. On merits, the Ld. AR contended that the Ld. AO has wrongly invoked Section 69C to Bogus purchases as the transactions were duly recorded in the books of account and the payments were made through banking channels from accounts which were duly reflected in the books of accounts. Further, the assessee accepted the quantum additions and did not contest the same any further in view of the fact that it could not obtain confirmatory letters from the alleged suppliers as they could not be traced at the relevant time. Nevertheless, the assessee was in possession of purchase invoices, delivery challans, ledger extracts thereof and all the payments were through banking channels. Therefore, the assessee voluntarily offered the quantum additions by filing revised



computation of income during quantum proceedings which was in good faith, to buy peace and to avoid any further litigation. The AO duly accepted the additions offered by the assessee without making any efforts to obtain confirmation from the alleged suppliers. In view of all these factors, the assessee stood good chance of succeeding in quantum appeal, however, it refrained from doing so only to buy peace of mind and avoid further litigation. Reliance was placed on following judicial pronouncements for various contentions:-

- i) CIT Vs. Reliance Petro products [2010 322 ITR 158 Supreme Court]
- ii) CIT Vs. Larsen & Toubro Ltd. [2014 366 ITR 502 Bombay High Court]
- iii) CIT Vs. Sonal Construction Co. [55 taxmnn.com 425 Gujarat High Court]
- iv) M.G.Contractors Pvt. Ltd. Vs. DCIT [ITA Nos.7034 to 7038/Del/2014 19/09/2016 Delhi Tribunal]
- v) Anita Builders Vs. ACIT [2002 74 ITJ 364 Jodhpur Tribunal]

5. Per *contra*, the Ld. Departmental representative placed reliance on Section 292B to contend that mere defect in the notice do not vitiates the penalty proceedings and no prejudice was caused to the assessee by non- marking of appropriate clause. The assessee very well knew the grounds for which he was being penalized and the Ld. AO with due application of mind initiated penalty proceedings in quantum assessment for *furnishing of inaccurate particulars of income* and finally levied the penalty on the same ground. Moreover, the assessee actively contested the penalty proceedings before AO and therefore, the legal grounds, being only *hyper-technical* in nature, do not carry much weight. Further, on merits, the Ld. DR pointed that the assessee's conduct proved the point that the purchases in dispute were bogus and the assessee, on being scrutinized by the revenue, accepted the same and revised the



computation of income despite being having the possession of purchase documents. Therefore, the assessee's contention that the addition was offered voluntarily, to buy peace of mind and to avoid vexed litigation holds no strength.

6. We have heard the rival contentions and perused the relevant material on record including cited case laws. So far as the legal grounds are concerned, a perusal of quantum order reveals that the penalty was initiated for *furnishing of inaccurate particulars* and finally the same was levied on the same ground. We find that the assessee was issued two show cause notices- one in the standard printed form u/s 274 dated 04/03/2013 as placed on Page No.-86 of the *paper book* and another dated 27/08/2013 by way of letter as placed in Page No. 92 of the *paper book*. We find that in the first notice, the relevant clause has not been ticked off and the second notice is simply a show cause notice. However, in the quantum order Ld. AO, after due deliberations, clearly initiated the penalty proceedings for *furnishing of inaccurate particulars* which shows due application of mind *qua* penalty proceedings. The penalty was finally levied on the same ground as well. Therefore, mere marking of relevant clause, in our opinion, on the facts of the case, has not caused any prejudice to the assessee particularly when the assessee voluntarily offered certain additions in the quantum proceedings with a specific request to AO for not initiating the penalty against the same. The assessee very well knew the charges / grounds for which he was being penalized and he actively contested the penalty before the Ld. AO. At this juncture, we find that the provisions of Section 292B comes to the rescue of the revenue which cures minor defect in the various notices



issued provided such notice in substance and effect was in conformity with the intent and purpose of the act. On overall facts and circumstances, we find that such condition was fulfilled in the instant case. We find that the revenue's Special Leave Petition [SLP] dismissed by the Apex court in *CIT Vs. SSA'S Emerald Meadows [supra]* confirmed the decision of Hon'ble High court, which in turn, relied upon the judgment rendered in *CIT Vs. Manjunatha Cotton & Ginning Factory [359 ITR 565]*. The decision rendered by Hon'ble Bombay High court in *CIT Vs. Samson Perinchery [supra]* also placed the reliance on this judgment. After perusing the ratio of the judgment rendered in *CIT Vs. Manjunatha Cotton & Ginning Factory [supra]*, we find that the assessee's appeal was allowed by Hon'ble High court after considering the multiple factors and not solely on the basis of defect in notice u/s 274. Therefore, we are of the opinion that the penalty could not be deleted merely on the basis of defect pointed by the Ld. AR in the notice and therefore, the legal grounds raised are rejected.

7. On merits, Ld. AR has assailed imposition of penalty on various grounds and placed reliance on various judicial pronouncements which we have duly considered. We find that first of all Section 69C could not be applied to the facts of the case as the payments were through banking channels which were duly reflected in the books of accounts and therefore, there was no *unexplained expenditure* within the meaning of Section 69C incurred by the assessee. Further, we find that the assessee was in possession of purchase invoices and various other documentary evidences *qua* these purchases. A bare perusal of the purchase invoices reveals that the assessee has purchased



consumables etc. from the alleged bogus suppliers, which are connected, at least to some extent, with the business of the assessee. The assessee, during quantum proceedings itself filed revised computation of income after disallowing the alleged bogus purchases by citing the reason that the suppliers were not traceable during assessment proceedings. Nevertheless, the assessee was in possession of vital evidences in his possession to *prima facie* substantiate his purchases to some extent particularly when the payments were through banking channels. Merely because the suppliers could not be traced at the given address would not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the assessee. The assessee made a claim which was *bona fide* and the same was coupled with documentary evidences but the same remained inconclusive for want of confirmation from the suppliers. Therefore, overall facts of the case do not justify imposition of penalty on the assessee and therefore, the same deserves to be deleted on merits of the case. All the cited case laws support the view taken by us in the matter. Therefore, by deleting the impugned penalties, we allow assessee's appeal.

8. In nutshell, the assessee's appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 02nd May, 2017.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 02 .05.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**