

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM

ITA Nos.3299, 3300 & 3301/Mum/2017
(Assessment Year: 2009-10, 2010-11 & 2011-12)

Armoury International Pereira Compound, Saki Naka, Andheri East, Mumbai-400 072	Vs.	Asst. CIT-21(3) Pratyakhakar Bhavan, Bandra Kurla Compled, Bandra (E), Mumbai-400 051
PAN/GIR No. AAFFA 8697 J		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Lalit Munoyat
Respondent by	:	Shri Satishchandra Rajore
Date of Hearing	:	24.12.2018
Date of Pronouncement	:	01.01.2019

ORDER

Per Shamim Yahya, A. M.:

These are appeals by the assessee against the respective orders of the learned Commissioner of Income Tax (Appeals)-38, Mumbai (‘ld.CIT(A) for short) dated 25.01.2017 and pertains to the assessment years (A.Y.) 2009-10 to 2011-12, sustaining the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (the Act for short).

2. In this case, the ld. CIT(A) has sustained following penalty u/s. 271(1)(c) of the Act :

A.Y. 2009-10	Rs.2,97,983/-
A.Y. 2010-11	Rs.3,55,040/-
A.Y. 2011-12	Rs.3,82,255/-

3. In this case, the assessee was observed to have made bogus purchases as per information received from the Sales Tax Department. The assessee was issued notice u/s. 148 on 11.03.2013 served on 12.03.2013. The assessee filed revised return of

income on 15.03.2013, wherein the amount of bogus purchase was offered for taxation. On this amount, the penalty u/s. 271(1)(c) was also levied.

4. Upon the assessee's appeal, the Id. CIT(A) confirmed the levy of penalty.

5. Against this levy of penalty, the assessee is in appeal before us.

6. We have heard both the counsel and perused the records. We find that the assessment in this case has been completed on the returned income. Hence, when the return of income and the assessed income are same, the machinery provision for levy of penalty u/s. 271(1)(c) fails, as the penalty u/s. 271(1)(c) is levied with reference to the tax sought to be evaded, which is the difference between the income returned and that assessed by the A.O.

7. In this case, since the assessed income and the returned income are the same, the machinery provision of penalty u/s. 271(1)(c) fails. In this regard, we draw support from the of Hon'ble Delhi High Court decision in the case of *CIT vs. SAS Pharmaceuticals* [2011] 335 ITR 259 (Del). The Hon'ble High Court has expounded that penalty u/s. 271(1)(c) can only be levied if in the course of proceedings, the A.O. is satisfied that there is an concealment or furnishing of inaccurate particulars. The words 'in the course of any proceedings under this Act mean the assessment proceedings'. However, the question 'whether there is concealment or inaccurate particulars' has to be determined with reference to the returned income. Accordingly, in the background of the aforesaid discussion and precedent, we set aside the order of the Id. CIT(A) and delete the levy of penalty.

8. In the result, these appeals by the assessee are allowed.

Order pronounced in the open court on 01.01.2019

Sd/-

Sd/-

(Ravish Sood)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 01.01.2019

Roshani, 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