IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA NO. 2798/MUM/2017 : A.Y : 2009-10

ACIT-33(3), Mumbai (Appellant)	Vs.	M/s. Sheth Construction Co. 507/508, Sanjay Enclave, Opp. Milan Cinema, S.V. Road, Kandivali (W), Mumbai 400 067. **PAN : AAPFS0792Q** (Respondent)

Appellant by : Shri Abdul Hakeem
Respondent by : Shri Hitesh Shah

Date of Hearing : 28/08/2018
Date of Pronouncement : 29/08/2018

O R D E R

PER G.S. PANNU, AM :

The captioned appeal filed by the Revenue pertaining to Assessment Year 2009-10 is directed against an order passed by CIT(A)-45, Mumbai dated 16.01.2017, which in turn arises out of an order passed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') dated 29.09.2015.

2. In this appeal, the issues relates to penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act amounting to Rs.49,08,290/- for Assessment Year 2009-10.

3. Notably, the respondent-assessee is a partnership firm engaged in the business of civil construction. In an assessment finalised u/s 143(3) r.w.s. 147 of the Act dated 29.03.2015, an addition of Rs.1,44,40,398/- was made by the Assessing Officer treating certain purchases as bogus. Subsequently, the Assessing Officer held the assessee guilty of concealment of income on the aforesaid income and levied penalty of 100% of the tax sought to be evaded on the said income, which amounted to Rs.49,08,290/-. The CIT(A) has deleted the penalty on two counts. Firstly, the CIT(A) noted that out of the total addition of Rs.1,44,40,398/- made by the Assessing Officer, the CIT(A) in the quantum proceedings vide order dated 28.04.2015 had reduced the addition, and rather he had restricted the addition to 8% of the unexplained purchases, which amounted to Rs.11,55,232/-. Thus, he deleted the penalty corresponding to the reduction in the disallowance made by the CIT(A). Secondly, even with regard to the addition sustained by the CIT(A), the penalty has been deleted on the ground that the addition was ultimately sustained in the quantum proceedings on an estimated basis and, therefore, following the ratio of the judgment of the Hon'ble Supreme Court in the case of *CIT vs Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC)*, the penalty has been deleted. Against such a decision, Revenue is in appeal before us.

4. Insofar as the penalty deleted by the CIT(A) in relation to the amount of disallowance reduced by the CIT(A) in the quantum proceedings is concerned, the respondent-assessee pointed out that the Tribunal in ITA No. 4280/Mum/2015 dated 24.03.2017 had affirmed the decision of the CIT(A) restricting the disallowance to 8% of the unexplained purchases, i.e. Rs.11,55,232/-. The said decision of the Tribunal continues to hold the field

and, therefore, under these circumstances, we find no error on the part of the CIT(A) in deleting the corresponding penalty imposed by the Assessing Officer.

5. Even with regard to the penalty with respect to the balance of disallowance of Rs.11,55,232/-, the finding of the CIT(A) that such addition in the quantum proceedings is "*made on estimate basis and without having established the filing of inaccurate particulars*" is not controverted by the ld. DR before us. The CIT(A) in para 5.2 of his order brings out that the entire details in relation to the purchases in question were available on record and that no concealment of income could be made out. In fact, in our view, it is a case where certain purchases have been found to be unsubstantiated leading to an estimated addition, and not a case where the purchases were unclinchingly found to be false or bogus. Therefore, on this aspect also, we find that the CIT(A) made no mistake in deleting the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th August, 2018.

Sd/-	Sd/-
(RAVISH SOOD)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Date : 29th August, 2018

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Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, "J" Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai