

No sec. 69C disallowance if payments were made through bank and were duly reflected in books of account

Summary – The Mumbai ITAT in a recent case of Earthmoving Equipment Service Corporation., (the Assessee) held that Section 69C could not be applied where payments were made to supplier through banking channels which were duly reflected in books of account and assessee was in possession of purchase invoices

Facts

- During assessment proceedings, certain repair and maintenance items were purchased by the assessee from five suppliers was treated as bogus.
- The Assessing Officer made an addition under section 69C as unexplained expenditure as the assessee could not produce confirmation from alleged bogus supplier. A notice under section 274 was issued to the assessee which was finally resulted into the imposition of penalty.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal before the Tribunal, the assessee contended that the show-cause notice issued under section 274 was defective as the relevant clause was not appropriately marked and no specific charge was mentioned therein for which the penalty was being initiated by the Assessing Officer. Further, he contended that the Assessing Officer had 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 account. Though, the assessee was in possession of purchase invoices 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.

Held

- The penalty was initiated for furnishing of inaccurate particulars and finally the same was levied on the same ground. The assessee was issued two show-cause notices - one under section 274 and another by way of letter. It is found 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 the Assessing Officer, 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, 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 the Assessing Officer for not initiating the penalty against the same. The assessee very well knew the

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charges / grounds for which he was being penalized and he actively contested the penalty before the Assessing Officer. At this juncture, 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, such condition was fulfilled in the instant case. Therefore, the penalty could not be deleted merely on the basis of defect pointed by the assessee in the notice and therefore, the legal grounds raised are rejected.

- On merits, the assessee has assailed imposition of penalty on various grounds and placed reliance on various judicial pronouncements which the Tribunal had duly considered. 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 account and therefore, there was no unexplained expenditure within the meaning of section 69C incurred by the assessee. Further, it is found 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. Therefore, by deleting the impugned penalties, the assessee's appeal was to be allowed.
- In a nutshell, the assessee's appeal stands partly allowed.