

3. The ground of appeal filed by the revenue reads as under:

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in cancelling the penalty without appreciating the fact that the assessee had inflated his purchases by obtaining accommodation bills from the hawala parties, as detected by the Sales Tax Authorities and as such had filed inaccurate particulars of his income.

The tax effect is below monetary limit. But it is covered within exception provided in CBDT Circular No. 3/2018 dated 11/07/2018 as further amended by CBDT letter dated 20/08/2018.”

4. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2010-11 on 20.09.2010 declaring total income of Rs.2,57,990/-. The assessee trades in Iron & Steel. On receipt of information from the Sales Tax Department, Govt. of Maharashtra that the assessee had made bogus purchases from four parties during the financial year 2009-10 relevant to the AY 2010-11, amounting to Rs.37,03,846/-, the Assessing Officer (AO) reopened the assessment by issuing notice u/s.148 of the Act. However, in the assessment order dated 04.03.2016 passed u/s. 143(3) r.w.s 147, the AO by following the decision of the Hon'ble Gujarat High Court in *CIT v. Simit P. Sheth* (ITA No.553 of 2012) and *CIT v. Bholanath Poly Fab (P) Ltd.* [ITA No. 63 of 2012) estimated the profit @12.5% of the disputed purchase of Rs.37,03,846/- and it comes to Rs.4,62,980/-.

Thereafter, the AO initiated proceedings u/s. 271(1)(c) of the Act. Observing that the assessee had understated profit to the tune of Rs. 4,62,980/- and thereby furnished inaccurate particulars leading to

concealment of income, the AO levied a minimum penalty of Rs.1,13,807/- u/s.271(1)(c) of the Act.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). We find that *vide* order dated 26.06.2018, the ld. CIT(A) observed that the addition has been made purely on estimate basis. Relying on the order of the Tribunal in the case of *Shri Deepak Gogri v. ITO*, in ITA No. 1396/MUM/2017 dated 23.11.2017, he held that there is no concealment of income or furnishing of inaccurate particulars of income as the profit element was determined by way of *ad hoc* estimation. Thus, the ld. CIT(A) deleted the penalty of Rs.1,13,807/- levied by the AO u/s.271(1)(c) of the Act.

6. Before us, the ld. DR submits that as the assessee indulged in bogus purchases by obtaining accommodation entries without actual delivery of goods, penalty u/s.271(1)(c) is leviable though the AO has estimated the profit. Explaining that this is a case where not only the assessee had filed inaccurate particulars of income but also concealed its income, the ld. DR submits that the order passed by the CIT(A) be set-aside and the penalty levied by the AO be restored.

7. We have heard the ld. DR and perused the relevant materials available on record. It is well-settled that penalty proceedings are independent and separate. In *Jain Bros v. Union of India*, (1970) 77 ITR 107, 116 (SC), it is held by the Hon'ble Supreme Court that although penalty has been regarded as an additional tax in certain sense and for certain purposes, it is not possible to hold that penalty proceedings are

essentially a continuation of the proceedings relating to assessment where a return has been filed.

In the instant case, the AO has summarily followed the assessment order and levied penalty u/s. 271(1)(c) forgetting that penalty proceedings are independent and separate. All the more, the profit arrived at by the AO in the assessment order is on estimation.

Therefore, we affirm the order of the ld. CIT(A).

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 11.11.2019

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 11/11/2019
S. Samanta P.S.(On tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai