



ITA No.5630/Mum/2018
M/s. Dipen Arvind Kothari
Assessment Year :2009-10

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5630/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income Tax Officer -27(1)(4) Tower No.6, 4 th Floor Room No.409, Vashi Railway Station Complex Vashi, Navi Mumbai.	बनाम/ Vs.	Shri Dipen Arvind Kothari 10, Siddharth Derasar Lane Ghatkopar (E) Mumbai-400 077
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACPK-8409-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri G.C. Lalka- Ld. AR
Revenue by	:	Ms. Jyoti Lakshmi Nayak-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	11/02/2020
घोषणा की तारीख / Date of Pronouncement	:	11/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24, Mumbai, [in short referred to as ‘CIT(A)’],
Appeal No. CIT(A)-24/IT-558/155/ITO-27(1)(4)/2017-18 dated



29/06/2018 qua deletion of penalty u/s 271(1)(c) for Rs.5.46 as levied by Ld.AO vide penalty order dated 22/09/2015.

2. The Ld. Authorized Representative for Assessee (AR), at the outset, raised a preliminary issue by submitting that the appeal is not maintainable in view of low tax effect Circular No.17/2019 dated 08/08/2019 issued by Central Board of Direct Taxes [CBDT].

3. The Ld. DR controverted the same by submitting that the quantum additions of *alleged bogus purchases* were made upon receipt of incriminating information from Sales Tax Department, which was an external agency. Since the penalty was levied against additions so made, the penalty proceedings would be covered by exception (e) of clause 10 of the circular no. 3 of 2018 as amended on 20/08/2018, which read as under: -

10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect: -

....

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI / ED / DRI / SFIO / Directorate General of GST Intelligence (DGGI).

The Ld. DR also submitted that since quantum additions were confirmed, the penalty was to be confirmed and Ld. CIT(A) erred in deleting the impugned penalty. Our attention has been drawn to the factual error committed by Ld. CIT(A) in the impugned order by observing that the additions were merely disallowance of expenditure debited to Profit & Loss Account as against the argument of the assessee that the



expenditure was capital expenditure. The Ld. DR submitted that it was never the submissions of the assessee that the expenditure was capital expenditure. In the above background, Ld. DR pleaded for set-aside of impugned order and confirmation of penalty as imposed by Ld.AO.

4. We have carefully heard rival submissions and perused relevant material on record. From the perusal of case records, it emerges that the assessee was assessed u/s 144 r.w.s. 147 wherein it was saddled with additions of Rs.19.25 Lacs on account of alleged bogus purchases stated to be made from 2 suppliers. The primary reason to make the addition was the fact that notices issued u/s 133(6) did not elicit satisfactory response and the assessee failed to substantiate the purchase transactions. The assessee also failed to produce any of the suppliers to confirm the transaction. Consequently, penalty proceedings were initiated in quantum assessment order and the assessee was saddled with impugned penalty u/s 271(1)(c) for Rs.5.46 Lacs. Upon further appeal, Ld. CIT(A) deleted the penalty by noting that there was mere disallowance of expenditure debited to Profit & Loss Account and concealment of income or furnishing of inaccurate particulars has not been established by Ld. AO. Aggrieved, the revenue is under further appeal before us.

5. Since the preliminary objection raised by the assessee question the very maintainability of revenue's appeal, we take up the same at the threshold. Undoubtedly, the quantum of penalty under dispute is Rs.5.46 Lacs and the same is certainly below the threshold limit of Rs.50 Lacs as provided in latest low tax effect Circular No.17/2019 dated 08/08/2019 issued by Central Board of Direct Taxes [CBDT].



6. The Ld. DR has pleaded that penalty should be construed to be covered by exception clause 10(e) since the same was levied on account of quantum additions which was based upon receipt of information from an external agency i.e. Sales Tax Department. We have considered the said submissions. It is settled legal position that quantum proceedings and penalty proceedings are independent and distinct proceedings and confirmation of additions may not be the sole ground for confirming the penalty. Extending the same logic, unless specific exception is provided in the circular with respect to penalty also, it could not be construed that the penalty was to be treated at par with quantum additions. The clause 10(e) specifically apply only to additions which are based on information received from external sources. The levy of penalty, by no stretch of imagination, could be construed as *addition* as envisaged by clause 10(e). Therefore, the submissions made by Ld. DR could not be honoured and we decline to accept the same.

7. Having reached such a conclusion, the appeal is liable to be dismissed in terms of latest low tax effect circular issued by CBDT. The same would obviate the need to delve into the merits of the case and accordingly, we refrain from doing so.

8. Having said so, a liberty is given to revenue to seek recall of the appeal, if at a later stage, it is found that the matter is covered by any exceptions provided in any of the circular or in case the tax effect as agitated by revenue exceeds the prescribed monetary limit.



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9. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 11th February, 2020.

Sd/-
(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/02/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.