

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 363/Mum/2019

(निर्धारण वर्ष / Assessment Years : 2010-11)

ITO, Ward 1(3) Rn. 10, 6 th Floor, B-Wing, Wagle Ind. Estate, Thane – 400 604.	बनाम/ Vs.	Shri Ketan P Bhavsar 501, Empire Ways, Sambhaji Nagar, Opp Nitin company, E.E Highway, Thane – 400601
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQPB4235N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri R. Bhoopathi, DR
प्रत्यर्थी की ओर से/Respondent by :	None

सुनवाई की तारीख / Date of Hearing	22/01/2020
घोषणा की तारीख/Date of Pronouncement	07/02/2020

आदेश / ORDER

PER VIKAS AWASTHY- JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Thane, dated 26.11.2018 for the A.Y 2010-11, deleting penalty levied u/s 271(1)(c) of the Income Tax Act 1961 (herein after referred to as ‘the Act’).

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2. When the appeal was called for hearing none appeared to represent the assessee. Even no application seeking adjournment has been received from the assessee. As is evident from the acknowledgement card available on record the notice of hearing of appeal was duly served on the assessee. Considering the above, we proceed to decide the appeal with the assistance from learned Departmental Representative and the material available on record.

3. The addition was made by the Assessing Officer in reassessment proceedings vide order dated 16/03/2015 passed u/s. 143(3) r.w.s. 147 of the Act by estimating GP@ 16.68% on alleged bogus purchases. The Assessing Officer vide order dated 30/09/2015 levied penalty u/s 271(1)(c) of the Act on the estimated addition of alleged bogus purchases.

4. Shri R. Bhoopathi, appearing on behalf of Department, vehemently defended the penalty order and prayed for reversing the findings of the CIT(A). The Departmental Representative submitted that

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since reopening was done on the basis of information received from external investigating agency, the appeal would not be covered by CBDT Circular dated 08/082019 on monetary limits for filing appeals by the Department.

5. I have considered the submissions made by ld.DR and have perused the orders of authorities below. Every addition made in assessment proceedings does not automatically lead to levy of penalty u/s. 271(1)(c) of the Act. In the instant case penalty u/s. 271(1)(c) has been levied on the disallowance of bogus purchases made on estimation. It is a well settled legal position that no penalty is leviable on additions based on estimations. Merely for the reason that addition has been accepted by the assessee does not ipso facto result in initiation of penalty proceedings. I see no reason to interfere with the impugned order.

6. I further observe that the quantum of penalty which is subject matter of dispute is Rs.33,316/-

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only. The Tax effect in this appeal by the Revenue is far less than the limit prescribed by CBDT for filing appeals by the Department before the Tribunal. It would be relevant to mention here that Department appeals emanating from penalty proceedings u/s 271(1)(c) of the Act on the additions consequent to information received from external investigating agencies are not covered by exceptions provided in para 10 of the CBDT circular dated 20.08.2018.

7. Thus, for the reasons cited above the appeal of Revenue is liable to be dismissed. I hold and direct accordingly.

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

Order pronounced in the open court after hearing on Friday, the 7th day of February, 2020.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 07/02/2020

VM,Sr.PS(O/S)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai