

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 364/Mum/2019

(निर्धारण वर्ष / Assessment Years : 2010-11)

ITO, Ward 3(4) 2 nd Floor, Rani Mansdion, Murbad Road, Kalyan – 421301.	बनाम/ Vs.	Hitesh N Mewadi Prop. of M/s.Prakash Trading Co. Arjun Smruti, 2 nd Floor, NR Janki Hotel, Kalyan Road, Dombivli, Thane – 421201.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AKMPM0364M		
(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 15/11/2018 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’).

- 2 -

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 of learned Departmental Representative and the material available on record.

3. The addition was made by the Assessing Officer in reassessment proceedings on account of alleged bogus purchases. The Assessing Officer vide order dated 28.07.2015 levied penalty u/s 271(1)(c) of the Act on the 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 since reopening was done on the basis of information received from external investigating agency, the

- 3 -

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. The Assessing Officer has made addition of entire bogus purchases and the same has been accepted by the assessee. The Tribunal in various decisions have consistently held that where sales are not disputed by the Department, entire alleged bogus purchases cannot be disallowed. It is only the GP on alleged bogus purchases that should be disallowed. Thus, the entire issue of bogus purchases boils down to estimation of undisclosed GP on alleged bogus purchases. Merely for the reason that addition has been accepted by the assessee does not ipso facto result in initiation of penalty

- 4 -

proceedings. Thus, in the facts of the case, I am of considered view that it is not a fit case for levy of penalty u/s. 271(1)(c) of the Act. I find no reason to interfere with the impugned order, hence, the same is upheld.

6. I further observe that the quantum of penalty which is subject matter of dispute is Rs. 44,992/- 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.

- 5 -

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