

**IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6316/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)

ITO – 27 (1) (4) Room No. 409, Tower no. 6, 4 th floor, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703.	बनाम/ Vs.	Chandrakant M. Gada 501, 5 th floor, Silver, Court, M. G. Road, Ghatkopar (E), Mumbai-400 077
स्थायीलेखासं./जीआइआरसं./PAN No. ACIPG0396H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Kumar Padmapani Bora, DR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Dilip V. Nathani, AR
सुनवाईकीतारीख/ Date of Hearing	:	18.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.01.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) - 25 in short referred as 'Ld. CIT(A)', Mumbai, dated 10.08.2018 for Assessment Year (in short AY) 2009-10.

2. At the outset, we notice that the tax effect of the relief granted by the Ld. Commissioner of Income Tax (Appeals) is below Rs. 50 lacs and as per Circular No.17 of 2019 dated 08.08.2019 issued by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, the CBDT has revised the monetary limit for filing appeals before the ITAT from the existing limit of Rs. 20 lacs to Rs. 50 lacs.

3. The Ld. Departmental Representative (DR) fairly conceded that this appeal is covered by the aforesaid circular issued by the CBDT. The Ld. DR submitted that in case this appeal falls in the exceptional case, the appeal may be allowed to recall.

4. We have gone through the order of the Ld. Commissioner of Income Tax (Appeals) and the grounds of appeals. We find that the tax effect in the above referred appeal is less than Rs. 50 lacs. Accordingly, we dismiss the aforesaid appeal filed by the Revenue as not maintainable/withdrawn.

5. Even on merit, the penalty was levied on estimation of disallowance on bogus purchase. The courts have held that penalty cannot be levied on estimation of income.

6. In the net result, the appeal filed by the revenue stands **dismissed.**

Order pronounced in the open court on 8th Jan, 2020.

Sd/- (Saktijit Dey) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. DK	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 08.01.2020
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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/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai