

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO. 370/MUM/2019(A.Y.2010-11)

Income Tax Officer , Ward 1(2)
6th Floor, 'B'Wing, Room No.24,
Ashar IT Park, Road No.16Z,
Wagle Industrial Estate,
Thane(W) 400 604

..... Appellant

Vs.

M/s. M.T.Phad-Kherade Enterprises,
5, Siddharth Tower, Pali Road,
Kopari, Thane 400 603,
PAN: AARFN1941P

..... Respondent

Appellant by : Shri R. Bhoopathi
Respondent by : None

Date of hearing : 22/01/2020
Date of pronouncement : 20/02/2020

ORDER

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. The addition was made by the Assessing Officer in reassessment proceedings vide order dated 05/02/2015 passed under section 143(3)

r.w.s. 147 of the Act by estimating GP @ 20% on alleged bogus purchases. The Assessing Officer vide order dated 19/08/2015 levied penalty u/s 271(1)(c) of the Act on the estimated addition of alleged bogus purchases.

3. 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 further submitted that 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.

4. I have considered the submissions made by Id.Departmental Representative 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 in deleting the levy of penalty.

5. I further observe that the quantum of penalty which is subject matter of dispute is Rs. 70,770/- 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.

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

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

Order pronounced in the open court on Thursday , the 20th day of February , 2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 20/02/2020

Vm, Sr. PS(O/S)

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai