

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

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1297/MUM/2019
Assessment Year: 2009-2010**

The Income Tax Officer, Ward – 1(3), Thane, Room No. 10, 6 th Floor, B-Wing, Wagle Industrial Estate, Thane (W) - 400604	Vs.	Shri Chandraprakash M. Agarwal, 51, Ground Floor, M.G. Road, Sindu Wadi, Ghatkopar (E), Mumbai - 400077 PAN: AFZPA6269D
(Appellant)		(Respondent)

Revenue by : Shri Rajesh Kumar Mishra (DR)
Assessee by : Shri Kaushik Agrawal (AR)

Date of Hearing: 03/03/2020
Date of Pronouncement: 03/03/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 06.12.2018 passed by the Commissioner of Income Tax (Appeals)-1 (for short 'the CIT(A), Thane, for the assessment year 2009-10, whereby the Ld. CIT(A) has allowed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the penalty levied u/s 271 (1) (c) without property appreciating the decisions of the Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. Vs CIT (Civil Appeal No. 9772 of 2013)", the Hon'ble Gujarat High Court's decision in the case of N.K. Proteins Ltd., Tax Appeal No. 242 of 2003 dated 20/06/2016 against which the SLP*

was dismissed by the Hon'ble Supreme Court and also ignoring the fact that Department received specific credible information in this case from the Sales Tax Department of the State Government of Maharashtra" in respect of non-genuine purchases.

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the penalty levied u/s 271 (1) (c) without appreciating the fact that there was a definite finding in the assessment order in respect of bogus purchases and of furnishing inaccurate particulars of income relating to purchases resulting into concealment of income.*
3. *It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11/07/2018 amended vide letter dated 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT (A) may kindly be vacated and that of the AO may be restored."*

3. At the outset, the Ld. counsel for the respondent/assessee pointed out 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. In the light of the aforesaid facts, the Ld. counsel submitted that this appeal is not maintainable and liable to be dismissed.

4. The Ld. Departmental Representative (DR) fairly admitted that this appeal is not maintainable in light of the aforesaid Circular issued by the CBDT, however, submitted that the department may be given liberty to file miscellaneous application in case it is found that the case falls under any of the exceptions provided in the Circular or otherwise maintainable.

5. We have gone through the impugned order passed by the Ld. Commissioner of Income Tax (Appeals) and the grounds of appeals. As pointed

out by the Ld. counsel, the tax effect in this appeal is less than Rs. 50 lacs. Accordingly, we dismiss the aforesaid appeal filed by the Revenue as not maintainable/withdrawn. However, in case, it is found that the case falls under any of the exceptions provided in the Circular or otherwise maintainable, then the revenue is at liberty to file miscellaneous application for recalling the order of the Tribunal for deciding the appeal afresh on merits.

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 3rd March, 2020.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 03/03/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai