

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.3784/MUM/2019 (A.Y: 2009-10)**

ACIT – 28(1) Room No. 306, 3 <sup>rd</sup> Floor, 6 <sup>th</sup> Tower Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703	v.	Shri Jaisingh Patel {Prop. Separation Engineers (India)} C6/6, 2:1, Sector-3 CBD Belapur, Navi Mumbai – 400 614  <b>PAN: AASPP4871E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **None**  
**Department by** : **Ms. Samatha Mullamudi**  
  
**Date of Hearing** : **07.10.2020**  
**Date of Pronouncement** : **07.10.2020**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)–26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.03.2019 for the Assessment Year 2009-10.

2. Revenue in its appeal has raised the following grounds: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in deleting the penalty of ₹.1,48,199/- levied u/s. 271(1)(c) of the Act as the penalty was

*levied on quantum additions made on account of bogus purchases, without appreciating the fact that the onus was on the assessee to establish the genuineness of such purchases by producing such parties before the Assessing Officer and the assessee failed to discharge his onus?*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in holding that the Assessing Officer has estimated the income without appreciating that the Assessing Officer has levied penalty, only after verifying the fact that the assessee evaded the taxes on quantum of additions made on account of bogus purchases and the assessee failed to establish the genuineness of such purchases”?*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in holding that assessee has neither concealed the particulars of income nor has it furnished inaccurate particulars of income, there being are no findings of the Assessing Officer that the details furnished by the assessee in his return are found to be inaccurate or erroneous or false without appreciating the fact by restoring to bogus purchases / accommodation entry, the assessee made an attempt to reduce the profitability and thereby attempted to avoid taxes, which in itself proves beyond doubt that assessee concealed particulars of income?*

4. *The appellant prays that the order of the Ld.CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored?*

5. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?”*

*On the facts and the circumstances of the case and in law, the learned CIT(A) erred in deleting the additions made on account of delayed payments of PF & ESIC.”*

3. At the time of hearing, when it was pointed out to the Ld. DR that the revenue effect in this appeal is below ₹.50 Lakhs the Ld. DR though agreed that tax effect on the issue in the present appeal is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt) the appeal of the Revenue is not

maintainable, it is submitted that this appeal is filed against deletion of penalty of ₹.1,48,199/- levied u/s. 271(1)(c) of the Act on the disallowance made towards bogus purchases.

4. Heard Ld. DR, perused the grounds of appeal and the orders of the authorities below. We find that the tax effect in this appeal is less than ₹.50 Lakhs and therefore the appeal of the revenue is not maintainable on account of low tax effect in view of the CBDT Circular No. 17/2019 dated 08.08.2019. We also observed that since the issue is in respect of levy of penalty u/s.271(1)(c) of the Act and none of the exception in the circular are applicable, the appeal is not maintainable.

5. In the result, appeal of the revenue is dismissed.

Order pronounced on 07.10.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 07/10/2020  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**