

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI
BEFORE SHRI MANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.4130/MUM/2019
(Assessment Year: 2011-12)**

Income Tax Officer-12(1)(1)
Room No. 226, 2nd Floor,
Aayakar Bhavan ,M.K. Road,
Mumbai – 400 020

M/s Air Vision Technologies
Private Limited,
Gala No. 9 to 16, Bldg. No.1,
Unico Industrial Park,
Tungareshwar Road,
Vasai (E), Palghar – 401 208

PAN No. AAFCA9802Q

(Revenue)

(Assessee)

Assessee by : Shri Ajay R. Singh, A.R
Revenue by : Shri Brajendra Kumar, D.R

Date of Hearing : 16/02/2021
Date of pronouncement : 19/02/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-20, Mumbai dated 28.03.2019, which in turn arises from the penalty imposed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 31.08.2016. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case, the Ld. CIT (A) failed to appreciate the fact that the AO had initiated the penalty u/s.271(1)(c) for furnishing of inaccurate particulars of income and penalty was also levied for furnishing inaccurate particulars of income.
2. On the facts and in the circumstances of the case, the Ld. CIT (A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.14,79,806/-without appreciating the facts that the assessee claimed bogus purchases in its Return of Income and thus furnished inaccurate particulars of income within the meaning of section 271 (1)(c) of the Income Tax Act, 1961.
3. On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT instruction no.3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities.

4. The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside 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.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of AC and grills dampers etc, had e-filed its return of income for A.Y.2011-12 on 20.09.2011, declaring a total income of Rs.2,11,35,525/-. The return of income filed by the assessee company was processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received from the DGIT(Inv.), that the assessee as a beneficiary had obtained accommodation bills of purchases, its case was reopened under Sec. 147 of the Act. In compliance to the notice issued under Sec. 148 of the Act, dated 23.03.2015 it was submitted by the assessee that its original return of income may be treated as a return filed under the aforesaid statutory provision.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases, from the following party:

Sr. No.	Name of the purchase party	PAN	F.Y.	Amount
1.	Renuka Sales Corporation	AAFCA9802Q	2010-11	47,89,018
	Total			47,89,018/-

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transaction, the A.O, thus, vide his order passed under Sec. 143(3) r.w.s 147 of the Act disallowed the entire amount of the aforesaid purchases. At the same time, the A.O while culminating the assessment also initiated penalty proceedings under Sec. 271(1)(c) of the Act.

4. As the assessee did not assail the quantum assessment any further in appeal before the CIT(A), the same, thus attained finality.

5. After the culmination of the assessment proceedings, the A.O vide his notice issued under Sec. 274 r.w.s 271(1)(c), dated 22.02.2016 called upon the assessee to explain as to why penalty under the aforesaid statutory provision may not be imposed on it for furnishing of inaccurate particulars of income relating to claim of non-genuine purchases. In reply, the assessee tried to impress upon the A.O that no penalty under Sec. 271(1)(c) was liable to be imposed in its case. However, the A.O not finding favour with the claim of the assessee imposed a penalty of Rs.14,79,806/- for furnishing of inaccurate particulars of income within the meaning of Sec. 271(1)(c) of the Act r.w. ‘Explanation 1’.

6. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c), vide his order dated 31.08.2016 before the CIT(A). After deliberating on the facts of the case in the backdrop of the contentions advanced by the assessee the CIT(A) found favour with the claim of the assessee that no penalty under Sec. 271(1)(c) was liable to be imposed, for the reasons, viz. (i) that as the A.O while calling upon the assessee to explain as to why penalty under Sec. 271(1)(c) may not be imposed had in the 'Show cause' notice (SCN) failed to strike off the irrelevant default thus, de hors validly putting him to notice as regards the default for which penalty was sought to be imposed, the same could not be sustained; and (ii) that the imposition of penalty by the A.O for furnishing of inaccurate particulars of income by the assessee by invoking 'Explanation 1' of the aforesaid penal provision could not be sustained; thus vacated the penalty imposed by the A.O.

7. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the appeal filed by the revenue was not maintainable as per CBDT Circular No. 17/2019, dated 08.08.2019, as the tax effect therein involved was substantially lower than that contemplated in the aforesaid circular.

8. Per contra, it was submitted by the Id. Departmental Representative (for short 'D.R') that as the addition of the alleged bogus purchases was based on the incriminating information that was received from the Sales Tax Department, Maharashtra, an external agency, thus, the present appeal filed by the revenue was covered by the Exception (e) of clause 10 of the CBDT Circular No. 3 of 2018 (as amended on 20.08.2018). It was averred by the Id. D.R that a specific ground to the effect that the appeal of the revenue was covered by the exception carved out in the aforesaid circular had been raised in the present appeal. Apart from that, on merits it was submitted by the Id. D.R that as the assessee had accepted the quantum addition and not carried the matter any further in appeal thus, the A.O had rightly imposed penalty under Sec. 271(1)(c) of the Act.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the CBDT Circulars as had been relied upon by them to drive home their respective contentions. Admittedly, the assessee had been saddled with a disallowance of the impugned bogus purchases of Rs.47,89,018/- w.r.t the purchases which were claimed by it to have been made from a concern viz. Renuka Sales Corporation. As is discernible from the assessment order, the aforesaid purchases were disallowed by the A.O, for the reason that the assessee had failed to substantiate the authenticity of the purchase transactions to the satisfaction of the A.O. Backed by the aforesaid addition, the A.O had thereafter imposed penalty

under Sec. 271(1)(c) r.w. 'Explanation 1' of Rs. 14,79,806/- on the assessee for furnishing of inaccurate particulars of income. As observed by us hereinabove, the CIT(A) for the aforesaid two fold reasons had vacated the penalty that was imposed by the A.O under Sec. 271(1)(c) of the Act.

10. Before us, as the assessee had assailed the very maintainability of the revenue's appeal, we, thus, shall first take up the validity of the said claim of the assessee. Admittedly, the quantum of penalty under dispute is Rs.14,79,806/- which is substantially below the threshold limit of Rs.50 lac as had been provided in the latest CBDT circular No. 17/2019, dated 08.08.2019, that contemplates the tax effect for filing of the appeals by the revenue. It is the claim of the Id. D.R that as the present appeal is covered by the exception carved out in clause 10(e) of the CBDT Circular No. 3 of 2018 (as amended on 20.08.2018) thus, the appeal filed by the revenue is maintainable. On the contrary, it is the claim of the Id. A.R that as the present appeal involves a tax effect below that contemplated by the CBDT in its Circular No. 17/2019, dated 08.08.2019, therefore, the appeal of the revenue was not maintainable and was liable to be dismissed on the said count itself.

11. Before adverting any further it would be relevant to cull out the exception carved out in clause 10(e) of the CBDT Circular No. 3/2018 (as amended on 20.08.2018), which reads as under:

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect: -

(a) to (d).....

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI / ED / DRI / SFIO / Directorate General of GST Intelligence (DGGI)".

Admittedly, it is a settled position of law that quantum proceedings and penalty proceedings are independent and distinct proceedings and confirmation of an addition cannot on a standalone basis justify imposition/upholding of a penalty u/s 271(1)(c) of the Act. Adopting the same logic, we are of the considered view that unless a specific exception is provided in the circular w.r.t penalty also, it could by no means be construed that penalty was to be treated at par with the quantum additions. As is discernible from Clause 10(e) of the aforesaid CBDT Circular No. 3/2018 (as amended on 20.08.2018), the same applied only to additions which were based on information received from external sources. As noticed by us hereinabove, since the levy of penalty by no means could be construed as an addition within the meaning of Clause 10(e) of the aforesaid circular, therefore, we do not find any merit in the contentions advanced by the Id. D.R that the aforesaid exception carved out in the CBDT Circular No. 3/2018 (supra) would also take within its realm a penalty imposed under Sec. 271(1)(c) w.r.t the

additions made by the A.O towards bogus purchases on the basis of information received from Sales Tax Department, i.e an external agency. Accordingly, finding favour with the claim of the Id. A.R that the appeal of the revenue is covered by the CBDT Circular No. 17/2019, dated 08.08.2019, the same, thus, in our considered view is not maintainable. Accordingly, we herein dismiss the appeal of the revenue, for the reason, that the tax effect therein involved is lower than that contemplated in the aforesaid CBDT Circular fixing the monetary limit of filing of appeals by the revenue before the Tribunal.

12. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 19.02.2021

Sd/-
Manoj Kumar Aggarwal
(ACCOUNTANT MEMBER)

Mumbai, Date: 19.02.2021
PS: Rohit

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai