

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

**BEFORE SHRI M.BALAGANESH (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5505/MUM/2019
(Assessment Year: 2011-12)**

DCIT-5(2)(2),
Room No. 571,
Aayakar Bhavan,
Mumbai – 400 020

M/s PCK Metals Pvt. Ltd.
Vs. Shop No.1, Kushal Bhavan,
65, 5th Floor, Kumbharwada,
Mumbai – 400 004

PAN No. AADCP8653Q

(Revenue)

(Assessee)

Assessee by : None
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 10/03/2021
Date of pronouncement : 23/03/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-10, Mumbai dated 14.06.2019, which in turn arises from the penalty order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 29.03.2018. The revenue has assailed the impugned order on the following grounds of appeal before us:

- "1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 55,507/- u/s 271(1)(c) of the I.T. Act 1963 on account of bogus purchases without appreciating that the onus was on the assessee to establish the genuineness of the transactions with impugned parties which the assessee failed and the assessee even failed to produce these parties before the Assessing Officer when called for as the notice u/s 133(6) of the I.T. Act 1961 issued to such parties were received un-served and it is clear case of furnishing inaccurate particulars of income with the meaning of section 271(1)(c) of the I.T. Act 1961.
2. Though the tax effect is below the prescribed limit, further appeal to ITAT is authorized as the case falls in exception as per Board Circular No 3/2018 with regard to addition/ disallowance made on account of information received from external agencies.

3. The appellant prays that the order of the Ld. CIT (A) be set aside and the order of the AO be restored.
4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."

2. Briefly stated, the assessee company which is engaged in the business of manufacturing & trading of ferrous and non-ferrous metals, had e-filed its return of income on 26.09.2010, declaring a total income of Rs.3,33,982/-. The return of income filed by the assessee company was processed as such under Sec.143(1) of the Act. Subsequently, the assessee revised its return of income on 31.03.2012 declaring its total income at Rs.4,73,775/-.

3. Information was received by the A.O from the DGIT(Inv.), Mumbai, that the assessee had obtained accommodation entries in the form of certain bogus purchase bills from certain hawala parties which were in the business of providing bills without delivery of goods etc. In 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 tainted party:

Sr. No.	Name of the party	Amount (Rs.)
1.	Shree Ganesh Metal & Alloys	14,37,072
	Total	14,37,072

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions, the A.O treated the impugned purchases as bogus and added the amount of Rs.14,37,072/- to the returned income of the assessee.

4. The assessee being aggrieved with the order of the A.O carried the matter in appeal before the CIT(A), who vide his order dated 27.02.2017 sustained the addition to the extent of 12.5% of the value of the impugned purchases.

5. After culmination of the assessment proceedings the A.O called upon the assessee to show cause as to why penalty under Sec. 271(1)(c) may not be imposed as regards the addition/disallowance of the impugned purchase of Rs.14,37,072/-. 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 hands. However, the A.O not finding favour with the submissions of the assessee imposed penalty under Sec. 271(1)(c) of Rs. 55,507/- under Sec. 271(1)(c) of the Act.

6. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) before the CIT(A). Observing that the addition/disallowance of the impugned purchases was made by the A.O

purely on an estimate basis, the CIT(A) was of the view that no penalty under Sec.271(1)(c) for concealment of income or furnishing of inaccurate particulars of income could have been imposed on the assessee. In other words, the CIT(A) held a conviction that no penalty under Sec.271(1)(c) was called for in respect of the adhoc estimation made by the A.O w.r.t the impugned purchases made by the assessee during the year in question. Apart from that, it was observed by the CIT(A) that as the quantum addition made by the A.O was significantly altered in the course of the appellate proceedings thus, the very basis of initiation of penalty was also rendered as non-existent. Backed by his aforesaid observations the CIT(A) vacated the penalty imposed by the A.O under Sec. 271(1)(c) of the Act.

7. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

8. As the assessee respondent despite having been intimated about the hearing of the present appeal had failed to put up an appearance before us, we, therefore, proceed with and dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities.

9. As is discernible from the orders of the lower authorities the quantum of penalty under dispute is Rs.55,507/- 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.

11. Before advertng 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 23.03.2021

Sd/-
M. Balaganesh
(ACCOUNTANT MEMBER)

Mumbai, Date: 23.03.2021
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 "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai