

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai**

**Before Shri S. Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.6340/Mum/2019
(Assessment Years: 2011-12)**

ITO- 13(2)(4), Room NO. 146B,
1st Floor, Aaykar Bhawan, M.K
Road, Mumbai – 400 020.

Vs.

M/s Stripco Springs Pvt. Ltd.,
7/8, Neelkamal, Roshan Nagar,
Borivali West, Mumbai – 400 092.

PAN – AAACS7984A

(Appellant)

(Respondent)

Appellant by: Shri. Vijay Kumar, D.R

Respondent by: Shri. Snehal Shah & Ms. Bijal, A.Rs

Date of Hearing: 31.03.2021

Date of Pronouncement: 06.04.2021

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-21, Mumbai, dated 21.02.2019, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act') dated 29.01.2019 for A.Y. 2011-12 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 levied OF Rs. 1,10,000/- u/s 271(l)(c) of the I.T. Act with appreciating the fact that Ld. CIT(A) has himself upheld the quantum addition of 3,55,154/- being 12.5% on the bogus purchase of Rs. 28,41,238/- against 30% of 8,52,371/- made by the Assessing Officer vide its order u/s 143(3) r.w.s. 147 of the Act dated 21.03.2016.
2. On the facts and circumstances of the case and in law the Ld. CIT(A) while deleting penalty u/s 271(l)(c) of Rs.1,10,000/- ignored the fact that the Hon'ble ITAT vide appellate order dated 22.05.2018 in the assessee's own case vide appeal No. ITA

1000/Mum/2018 has confirmed the order of the Ld. CIT(A) who upheld the quantum disallowance of Rs.3,55,154/- being 12.5% out of Rs.28,41,238/-."

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of sheet metal components had e-filed its return of income for A.Y 2011-12 on 30.09.2011, declaring a total income of Rs. 88,422/-. Subsequently, a revised return of income was filed on 14.01.2012 declaring Nil income. Thereafter, the case of the assessee was reopened under Sec. 147 of the Act. Observing that the assessee had booked bogus purchases aggregating to Rs. 28,41,238/- from two parties, viz. (i). M/s Macos Iron & Steel Pvt. Ltd. : Rs. 2,27,467/-; and (ii). M/s Ceepot Iron & Steel Pvt. Ltd. : Rs. 26,13,771/-, the A.O disallowed 30% of the said impugned purchases and made a disallowance of Rs. 8,52,371. Vide order passed under Sec. 143(3) r.w.s 147, dated 21.03.2016, the A.O after inter alia making the aforesaid disallowance assessed the income of the assessee at Rs. 9,40,790/-. The A.O while culminating the assessment also initiated penalty proceedings under Sec. 271(1)(c) of the Act.
3. On appeal, the CIT(A) restricted the addition to an amount of Rs. 3,55,154/- i.e 12.5% of the disallowance of Rs. 28,41,238/-, which thereafter was upheld by the Tribunal, vide its order in ITA No. 1000/Mum/2018, dated 22.05.2018.
4. The A.O vide his order under Sec. 271(1)(c), dated 29.01.2019 not finding favour with the reply of the assessee imposed a penalty of Rs. 1,09,742/-.
5. On appeal, the CIT(A) observed that addition was made in the hands of the assessee on an estimate basis. Being of the view that penalty under Sec. 271(1)(c) cannot be imposed where income was estimated, the CIT(A) vide his order dated 28.06.20-19 vacated the penalty.

6. Aggrieved, the revenue has assailed the order passed by the CIT(A), wherein the latter had vacated the penalty imposed by the A.O under Sec. 271(1)(c). 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 the 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.

7. Per contra, it was submitted by the Id. Departmental Representative (for short 'D.R') that 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).

8. 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.

9. 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. 1,09,742/- 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.

10. 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.

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

Order pronounced in the open court on 06.04.2021

Sd/-
S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 06.04.2021
PS: Rohit

Copy of the Order forwarded to :

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

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai