

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5414/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

ACIT-5(2)(1) R.No.525 Aaykar Bhawan M.K.Road Mumbai – 400 020	बनाम/ Vs.	M/s Neelkamal Realtors & Erectors P. Ltd. 265-E, Belasis Road Mumbai Central Mumbai – 400 008
स्थायीलेखासं. /जीआइआरसं. /PAN/GIR No. AABCN-9254-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Shri Tharian Oommen-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22/04/2021
घोषणा की तारीख / Date of Pronouncement	:	03/05/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-10, Mumbai [CIT(A)] dated 31/05/2019 which has deleted the penalty of Rs.80,146/- u/s 271(1)(c) as levied by Ld. AO vide penalty order dated 28/12/2017. Though none appeared for assessee, however, the material on record was sufficient enough for disposal of the appeal.

2. The assessee was assessed u/s 143(3) on 26/02/2013 wherein it was saddled with additions of Rs.54.76 Lacs on account of unproved purchases. The quantum addition was ultimately been confirmed on estimated basis to the extent of Rs.2.36 Lacs by Tribunal. Consequently, impugned penalty of Rs.80,146/- was levied by Ld. AO against the assessee vide order dated 28/12/2017. Upon further appeal challenging levy of penalty, Ld. CIT(A) deleted the same, inter-alia, by observing that except for rejection of assessee's explanation, there was no material to sustain the plea of concealment. Further, the quantum additions were significantly reduced by the Tribunal. Aggrieved, the revenue is in further appeal before us.

3. In our considered opinion, the impugned order would not require any interference on our part for two reasons. Firstly, the additions were merely estimated additions for unproved purchases and therefore, no case of concealment of income or furnishing of inaccurate particulars of income could be made out against the assessee. Secondly, the revenue's appeal is not maintainable in terms of latest low tax effect CBDT Circular No. 17/2019 dated 08/08/2019 [F.No.279/Misc. 142/2007-TTJ(Pt.)] which prescribes minimum threshold limit of Rs.50 Lacs for revenue to agitate the matter further before Tribunal. It is settled legal position that quantum proceedings and penalty proceedings are independent and distinct proceedings and confirmation of additions may not be the sole ground for confirming the penalty. Extending the same logic, unless specific exception is provided in the circular with respect to penalty also, it could not be construed that the penalty was to be treated at par with quantum additions. The clause 10(e) specifically applies only to additions which are based on information received from external

sources. The levy of penalty, by no stretch of imagination, could be construed as *addition* as envisaged by clause 10(e). Therefore, the submissions made by Ld. DR could not be honored and we decline to accept the same.

4. Resultantly, the appeal stand dismissed.

Order pronounced on 3rd May, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 03/05/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.