

IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' MUMBAI

**BEFORE: SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6806/Mum/2019
(Assessment Year :2010-11)**

&

**ITA No.6807/Mum/2019
(Assessment Year :2011-12)**

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| ITO 32(1)(1) R.No.703, 7 th Floor Kautilay Bhavan BKC East Mumbai- 400 051 | Vs. | Ms. Alka Narendra Madhani 403, Tulsi Toower TPS III 51 st Road Borivali West Mumbai- 400 002 |
| PAN/GIR No. AJIPM9454B | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|----------------------|
| Revenue by | Shri Brajendra Kumar |
| Assessee by | Shri Jitendra Singh |
| Date of Hearing | 10/05/2021 |
| Date of Pronouncement | 10/05/2021 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M.):

These appeals in ITA Nos.6806/Mum/2019 & 6807/Mum/2019 for A.Y.2010-11 & 2011-12 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-44, Mumbai in appeal No.CIT(A)-44/ITO-32(1)(1)/IT-126/18-19 & CIT(A)-44/ITO-32(1)(1)/IT-132/18-19 dated 30/08/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(C) of the Income Tax Act, 1961 (hereinafter referred to as 'Act')

2. We have heard rival submissions and perused the material available on record. We find that the Id. AO had levied penalty on the estimated addition made on account of bogus purchases. This penalty levied u/s.271(1)(c) of the Act on an addition made on account of bogus purchases was deleted by the Id. CIT(A) on the primary ground that no penalty would survive on an estimated addition. Aggrieved, the revenue is in appeal before us.

3. We find at the outset, the Id AR argued that penalty that is in dispute before us, falls below the monetary limit prescribed by the CBDT in its Circular No. 17/2019 dated 08/08/2019 for preferring appeal by the Revenue before this Tribunal. We find that the Id. DR vehemently argued that the said cases fall within the exception provided in para 10(e) of the said Circular and accordingly he argued that the appeals are maintainable. We find that the exception provided in para 10(e) of the Circular 17/2019 dated 08/08/2019 is applicable only for the quantum proceedings and the same cannot be made applicable for penalty proceedings. It is well settled that penalty and quantum assessment proceedings are distinct and separate. Accordingly, we dismiss these appeals of the Revenue by following the aforesaid Circular No.17/2019 dated 08/08/2019 and hold that the appeals of the Revenue are not maintainable.

4. In the result, appeals of the Revenue are dismissed.

Order pronounced in open Court on 10/05/2021.

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

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

10/05/2021

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, Mumbai