

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

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

**ITA No.6186/MUM/2019
(Assessment Year: 2009-10)**

ITO-12(3)(3)
Room No. 224, 2nd Floor,
Aayakar Bhawan, M.K. Road,
Mumbai – 400020

M/s Maniar Electricals Private
Vs. Limited, 101, Embassy
Chamber, Khar (W),
Mumbai 400 052

PAN No. AAACY0301K

(Revenue)

(Assessee)

Assessee by : Shri Sanjay Mutha
Revenue by : Shri Bharat Andhale, Sr. D.R

Date of Hearing : 27/04/2021
Date of pronouncement : 21/05/2021

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 26.06.2019, 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 31.03.2018. 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) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, of Rs.80,243/- 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.
2. 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 CBDTs Circular no. 17/2019 dated 08.08.2019 read with circular 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.

3. 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.
4. 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 trading in computer parts & services maintenance and networking peripherals had e-filed its return of income for A.Y. 2009-10 on 29.09.2009, declaring a total income of Rs.20,19,090/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received from the Investigation wing, Mumbai, that the assessee as a beneficiary had obtained accommodation entries of purchases, its case was reopened by the A.O under Sec. 147 of the Act. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases aggregating to Rs.5,19,375/- from a tainted party viz. M/s Nikhil Enterprise.

3. As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions, the A.O, disallowed the entire amount of impugned purchases of Rs.5,19,375/-. At the time of culminating the assessment the A.O also initiated penalty proceedings under Sec.271(1)(c) of the Act.

4. After the culmination of the assessment proceedings, the A.O vide his order passed under Sec. 271(1)(c), dated 31.03.2018 imposed a penalty for furnishing of inaccurate particulars of income of amounting to Rs.80,243/- under Sec. 271(1)(c) of the Act.

5. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) in appeal before the CIT(A). Observing, that the penalty u/s 271(1)(c) was imposed by the A.O on the basis of an estimate the CIT(A) vacated the same.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. D.R relied on the order passed by the A.O u/s 271(1)(c) of the Act. Per contra, the Id. A.R submitted that as the ‘tax effect’ involved in the captioned appeal was below that contemplated in the CBDT Circular No. 17/2019, dated 08.08.2019, therefore, the revenue’s appeal was not maintainable.

7. As is discernible from the records, the quantum of penalty imposed by the A.O u/s 271(1)(c) under dispute is Rs.80,243/-, 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. However, 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.

8. 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.

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

Order pronounced in the open court on 21.05.2021

Sd/-
M. Balaganesh
(ACCOUNTANT MEMBER)

Mumbai, Date: 21.05.2021
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 "D" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai