

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.5504/Mum/2019  
(Assessment Year :2009-10)**

Income Tax Officer, Ward 2(4), Kalyan 2 <sup>nd</sup> Floor, Mohan Plaza Bldg. Wayle Nagar, Khadakpada Kalyan West – 421301	Vs.	Smt. Shanta Anil Garad Prop. Shivshakti Trading Co. 1518/1 & 2, MIDC Shed Morivali Village Ambarnath – 400 092
<b>PAN/GIR No.AGLPG8260F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri T.S. Khalsa
Assessee by	Shri Sunil Makhija
<b>Date of Hearing</b>	<b>14/06/2021</b>
<b>Date of Pronouncement</b>	<b>14/06/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.5504/Mum/2019 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.10122-THN/18-19 dated 06/06/2019 (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 this appeal of the Revenue by following the aforesaid Circular No.17/2019 dated 08/08/2019 and hold that the appeal of the Revenue is not maintainable.

**4. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 14/06/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(MAHAVIR SINGH)**  
VICE PRESIDENT

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 14/06/2021

KARUNA, *sr.ps*

**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**