

IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI S.RIFAUH RAHMAN (ACCOUNTANT MEMBER)

I.T.A. Nos.8052 & 8053/Mum/2019  
(Assessment years 2009-10 & 2010-11)

Dy.CIT, Circle-3, Thane	vs	Shri Subhash Bhaginath Khakal G-2, Devprayag CHS, Hariniwas Circle, Bhakti Mandir Road, Naupada, Thane(W)-400 602 PAN : ABEPK0747P
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Vijay Kumar Menon, DR
Respondent by	None

Date of hearing	01 -06-2021
Date of pronouncement	30-06-2021

**ORDER**

**Per : Saktijit Dey (JM):**

Captioned appeals by the revenue arise out of two separate orders, both dated 01-10-2019, of learned Commissioner of Income Tax (Appeals)-2, Thane deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment years 2009-10 and 2010-11.

2. When the appeals were called for hearing, no one appeared for the assessee. However, considering the nature of dispute, we proceed to dispose of

the appeals ex parte qua the assessee after hearing the learned departmental representative and based on material available on record.

3. Briefly the facts are, the assessee is an individual and filed his returns of income for the impugned assessment years in regular course. Assessments in case of the assessee were originally completed under section 143(3) of the Act. Subsequently, the assessing officer received information from the Sales-tax department, Government of Maharashtra that the assessee is a beneficiary of accommodation entries provided by way of bogus purchase bills in both the assessment years under dispute. On the basis of such information, the assessing officer reopened the assessments under section 147 of the Act. In course of assessment proceedings, though, the assessee claimed that the purchases are genuine; however, rejecting the claim of the assessee, the assessing officer disallowed the entire purchases and added back an amount of Rs.87,33,917/- in assessment year 2009-10 and Rs.64,38,381/- in assessment year 2010-11. Against the assessment orders so passed, assessee preferred appeals before learned Commissioner of Income Tax (Appeals) and being unsuccessful went in further appeals before the Tribunal. During the pendency of appeals before the Tribunal, the assessing officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed orders imposing penalty of Rs.26,98,780/- and Rs.16,80,459/- in assessment years 2009-10 and 2010-11 respectively, alleging concealment of income. Challenging the orders passed by the assessing officer imposing penalty, assessee preferred appeals before learned Commissioner of Income Tax (Appeals). Having taken note of the fact that while deciding quantum appeals, the Tribunal has restricted the disallowance to the profit element embedded in the alleged non genuine purchases by estimating at

12.5% and relying upon certain judicial precedents, learned Commissioner of Income Tax (Appeals) deleted the penalty imposed under section 271(1)(c) of the Act in both the assessment years under dispute.

4. We have considered the submissions of learned departmental representative and perused the materials available on record. Undisputedly, based on certain information received from the Sales-tax department, Government of Maharashtra, the assessing officer has treated certain purchases made by the assessee as non genuine and has disallowed them fully. Though, learned Commissioner of Income Tax (Appeals) upheld such disallowances made by the assessing officer; however, while deciding assessee's appeals, the Tribunal in ITAs 858 and 859/Mum/2016 dated 18-12-2017 has restricted the disallowance to 12.5%, being the profit element embedded in the alleged non genuine purchases in both the assessment years under dispute. Thus, from the aforesaid facts, it is very much clear that the Tribunal being convinced with the fact that the assessee, indeed, had purchased the disputed goods, though, may be from unverified sources, has restricted the disallowance only to the profit element embedded in such purchases, that too, on an estimate basis. Thus, the disallowance sustained by the Tribunal was by entertaining some doubt and suspicion with regard to the source of purchases and taking into consideration the consequential suppression of profit that might have escaped tax. However, such estimated addition in no way would lead to the conclusion that the assessee has concealed his income. Moreover, a perusal of the penalty orders passed by the assessing officer would make it clear that he has imposed penalty under section 271(1)(c) of the Act, based on the quantum of disallowance made by the assessing officer and learned Commissioner of Income Tax (Appeals). However, such

quantum of disallowance has substantially been reduced after the decision of the Tribunal. In any case of the matter, as rightly observed by learned Commissioner of Income Tax (Appeals), the disallowance / addition sustained by the Tribunal was purely on estimate basis. Therefore, the alleged concealment of income by the assessee is not borne out from record. In view of the aforesaid, we uphold the decision of learned Commissioner of Income Tax (Appeals) in deleting the penalty imposed Under section 271(1)(c) of the Act.

5. Even otherwise also, the tax effect on the amount disputed by the revenue in both these appeals is below the monetary limit of Rs.50 lakhs stipulated in CBDT circular no. 17/2019 dated 08<sup>th</sup> August, 2019. Having analysed the factual position, we are of the considered opinion that the present appeals of the revenue are not covered by any of the exceptions provided to the aforesaid circular issued by the CBDT, as, the penalty proceeding is an independent proceeding. Therefore, in our considered opinion, the present appeals of the department are not maintainable. For this reason also, they deserve to be dismissed. Accordingly, we do so.

6. In the result, both the appeals are dismissed.

Order pronounced on 30/06/2021.

Sd/-

sd/-

<b>(S.RIFAUH RAHMAN)</b>	<b>(SAKTIJIT DEY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 30/06/2021

Pavanan

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

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By Order

Asstt. Registrar, ITAT, Mumbai