

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

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI M. BALAGANESH (ACCOUNTANT MEMBER)**

**ITA No. 6368/MUM/2019
Assessment Year: 2014-15**

ACIT-26(1),
Room No. 302, 3rd floor, Kautilya
Bhavan, Bandra Kurla Complex,
Bandra (E),
Mumbai-400051.

Appellant

Vs. M/s Cotton Nation,
304, 3rd floor, VTM Building,
Mehra Compound Saki Naka
Mumbai-400072.

**PAN No. AAHFC 2784 N
Respondent**

Revenue by : Ms. Shreekala Pardeshi, DR
Assessee by : None

Date of Hearing : 24/06/2021
Date of pronouncement : 01/07/2021

ORDER

PER M. BALAGANESH, A.M.

The appeal of the assessee arises out of the order passed by the Ld. Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as 'Ld. CIT(A)'] dated 28.01.2019 for assessment year 2014-15 against the order of assessment framed by the Ld. Assistant Commissioner of Income Tax-26(1), Mumbai (hereinafter referred to as 'AO') on 19.12.2016 for assessment year 2014-15 u/s 143(3) 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 ld. 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 ld. 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 ld 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 ld. DR vehemently argued that the said case falls within the exception provided in para 10(e) of the said Circular and accordingly he argued that the appeal is 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 appeal of the Revenue is not maintainable.

Order pronounced in the open Court on 01/07/2021

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai;
Dated: 01/07/2021
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai