

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

**BEFORE SHRI S. RIFAUZ RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.44/MUM/2020  
(Assessment Year: 2009-10)**

Income Tax Officer-32(1)(5),  
Room No.729, 7<sup>th</sup> Floor,  
Kautilya Bhavan, Bandra Kurla  
Complex, Bandra (East),  
Mumbai – 400051

Hemant Krishnakant Desai  
Vs. A/201, Veena Sitar CHSL  
Sector – 1, Mahavir Nagar,  
Dahanukar Kandivali West,  
Mumbai - 400067

**PAN No. AFQPD9755G**

**(Revenue)**

**(Assessee)**

Assessee by : None  
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 28/06/2021  
Date of pronouncement : 29/06/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-44, Mumbai, dated 31.10.2019, which in turn arises from the penalty order passed by the A.O u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 12.03.2018 for A.Y 2009-10. The revenue has assailed the impugned order on the following grounds 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.83.418/- without appreciating the facts that the Assessing Officer has correctly held that the assessee has failed to substantiate the transactions claimed in its return of income thereby evaded taxes to that extent.
2. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in not appreciating the fact that the act of assessee clearly falls within the ambit of provisions of Explanation-1, to section 271(1)(c) of the Act as the assessee had failed to offer an explanation or which was found by the A.O to be false.
3. On the facts and in the circumstances of N.A the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the A.O. u/s 271(1)(c) of the I.T. Act, 1961 of

Rs.83,418/- without appreciating the facts that the assessee claimed bogus purchases in its Return of Income thereby making himself liable for Penalty u/s 271(1)(c) of the I. T. Act 1961.

4. On the facts and in the circumstances of N.A the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT Circular No.17/2019 dated 08.08.2019 r.w. circular No.3/2018 as the case falls in the exception provided in Para 10(3)of the said Circular 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.
5. 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.
6. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated, the assessee who is engaged in the business of trading of glass had e-filed his return of income for A.Y. 2009-10 on 20.09.2009, declaring a total income of Rs.2,55,940/-. The return of income was processed as such u/s 143(1) of the Act. Subsequently, on the basis of information received from the DGIT(Inv.), Mumbai (as was gathered from the Sales Tax Department), that the assessee as a beneficiary had obtained bogus purchase bills of Rs.18,35,378/-, the case was reopened u/s 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases of Rs. 18,35,378/- from the following two tainted parties:

TIN	Name to the party	Amount (Rs.)
27660591188V	Saileela Trading Pvt. Ltd.	7,92,608
27070580309V	Lahree Impex	10,42,770
	Total	18,35,378/-

As the assessee failed to substantiate the genuineness and veracity of the aforementioned impugned purchase transactions, therefore, the A.O added the entire amount of the impugned purchases of Rs.18,35,378/- u/s 69C of the Act. Accordingly, the A.O vide his order passed u/s 143(3) r.w.s 147, dated 16.03.2015 assessed the income of the assessee at Rs. 20,91,320/-.

4. On appeal against the quantum assessment, the CIT(A) was of the view that the assessee had purchased the goods under consideration not from the aforementioned hawala parties but at a discounted value from the open/grey market. Accordingly, the CIT(A) was of the view that the addition was liable to be restricted to the extent the assessee would had benefited

by procuring the goods at a discounted value from the open/grey market. The CIT(A) backed by his aforesaid conviction restricted the addition to 15% of the impugned purchases of Rs.18,35,378/- and sustained the addition to the extent of Rs.2,75,306/-.

5. After receiving the order of the CIT(A), the A.O imposed penalty u/s 271(1)(c) of Rs.83,418/-, vide his order dated 12.03.2018.

6. On appeal against the penalty imposed by the A.O u/s 271(1)(c) of the Act, the CIT(A) was of the view that as the addition was sustained in the course of the quantum appeal on an estimate/adhoc basis, therefore, penalty u/s 271(1)(c) could not have been imposed on the assessee. Accordingly, the CIT(A) vacated the penalty imposed by the A.O u/s 271(1)(c) and allowed the appeal.

7. Aggrieved, the revenue has carried the matter in appeal before us. We find that the assessee respondent despite having been intimated about the hearing of the appeal has failed to put up an appearance in the course of the proceedings before us. We, thus, are constrained to proceed with the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, and dispose off the same after hearing the appellant revenue and perusing the orders of the lower authorities.

8. Admittedly, the assessee pursuant to the order of the CIT(A) had been saddled with an addition/disallowance of Rs.83,418/- as regards the impugned purchases that were claimed to have been made from two concerns, viz. (i) Saileela Trading Pvt. Ltd.; and (ii) Lahree Impex. As is discernible from the assessment order, the aforesaid purchases were disallowed by the A.O, for the reason, that the assessee had failed to substantiate the authenticity of the purchase transactions to the satisfaction of the A.O. However, on appeal, the CIT(A) being of the view that the assessee had procured the goods under consideration not from the aforementioned hawala parties but from the open/grey market, thus, on an estimate/adhoc basis restricted the disallowance to the extent the assessee would had benefited from procuring the goods at a discounted value. On the basis of the aforesaid addition sustained by the CIT(A), the A.O had imposed penalty under Sec. 271(1)(c) of Rs. 83,418/-. But then, the CIT(A) holding a conviction that no penalty u/s 271(1)(c) could be sustained as regards an addition made on an estimate/ad hoc basis, had thus, vacated the same.

9. Admittedly, the quantum of penalty under dispute is Rs.83,418/- which is substantially below the threshold limit of Rs.50 lac as had been provided in the CBDT Circular No.17/2019, dated 08.08.2019 that contemplates the 'tax effect' for filing of the appeals by the revenue. We, thus, are of the considered view that considering the low 'tax effect' involved in the present appeal of the revenue, the same is not maintainable in light of the aforesaid CBDT Circular No. 17/2019, dated 08.08.2019.

10. Before parting, in order to dispel all doubts, we may herein clarify that the exception carved out in Clause 10(e) of the CBDT Circular No.3/2018 (as amended on 20.08.2018) is qua the appeals filed by the revenue 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), and thus, the same would not take within its sweep an appeal filed by the revenue against the penalty imposed on the basis of the aforesaid additions. For the sake of clarity, we may cull out the exception carved out in Clause 10(e) of the CBDT Circular No. 3/2018 (as amended on 20.08.2018), which read 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 CBDT Circular No.3/2018 (supra) with respect to 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 (supra), the same applied only to additions that 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, the aforesaid exception carved out in the CBDT Circular No. 3/2018 (supra) would not 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, as 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 No. 17/2019 (supra) fixing the monetary limit of filing of appeals by the revenue before the Tribunal.

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

Order pronounced in the open court on 29.06.2021

Sd/-  
S. Rifaur Rahman  
(ACCOUNTANT MEMBER)

Mumbai, Date: 29.06.2021  
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 "H" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar