

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.7959/Mum/2019
(Assessment Year :2010-11)**

DCIT- 2(2)(2), Mumbai Room No.545, 5 th Floor Aayakar Bhavan Mumbai – 400 020	Vs.	M/s. Nishigandha Polymers Pvt. Ltd., 3 rd Floor, Rustom Building 29, Veer Nariman Road Fountain, Mumbai – 400 023
PAN/GIR No.AAACB6044J		
(Appellant)	..	(Respondent)

Revenue by	Shri Tharian Oommen
Assessee by	Shri Mayank Chauhan
Date of Hearing	05/07/2021
Date of Pronouncement	09/07/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.7959/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-CIT(A)-5, Mumbai in appeal No.CIT(A)-5/ACIT-2(2)(2)/IT-24/17-18 dated 01/10/2019 (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 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. Even otherwise on merits, we find that the concealment penalty u/s.271(1)(c) of the Act had been levied in the instant case on an estimated addition made on account of bogus purchases. The law is very well settled that no concealment penalty would lie on an estimated addition. 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 09/07/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai; Dated 09/07/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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