

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 76/MUM/2020
Assessment Year: 2009-10
&
ITA No. 77/MUM/2019
Assessment Year: 2010-11**

Dy. Commissioner of Income Tax (1)(3)(1), Room No. 540, 5 th Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020	Vs.	M/s SVD Resins and Plastic Pvt. Ltd., 223, 1 st Floor, Ashoka Shopping Centre, G.T. Hospital Complex, L.T. Marg, Mumbai- 400001 PAN: AAACS7908L
(Appellant)		(Respondent)

Revenue by : Shri Vijay Kumar Menon (DR)

Assessee by : Shri Prakash Jhunjunwala (AR)

Date of Hearing : 24/06/2021

Date of Pronouncement: 20/07/2021

ORDER

PER SAKTIJIT DEY, JM

Captioned appeals by the revenue are against a common order dated 26.06.2019 of learned Commissioner of Income Tax (Appeals)-3, Mumbai 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. Briefly the facts are, the assessee, a resident company, is stated to be a stockiest of resins and chemicals purchased from various manufacturer, traders, brokers of local market and dispatches such goods to its warehousing at Bhiwandi. The assessee is also stated to be conducting exclusive trading activity. For the assessment years under dispute, the assessee had filed its returns of income under section 139(1) of the Act. Subsequently, having

reason to believe that certain purchases claimed to have been made by the assessee during the relevant years are non genuine, the Assessing Officer (AO) reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to prove purchases made from certain parties through supporting evidence. In compliance to the query raised, assessee furnished some supporting details. However, the AO was not fully satisfied with the documentary evidences furnished by the assessee. Thus, he ultimately treated purchases worth Rs. 1,34,25,500/- and Rs. 93,46,750/- in assessment years 2009-10 and 2010-11 respectively, as non-genuine and added back to the income of the assessee. Assessee contested the aforesaid additions before learned Commissioner (Appeals). Partly accepting the submissions of the assessee, learned Commissioner (Appeals) restricted the disallowance to 7.76% in assessment year 2009-10 and 7.54% in assessment year 2010-11. Against the aforesaid decision of the learned Commissioner (Appeals), both the assessee and revenue went in appeal before the Tribunal. The Tribunal while dismissing the appeals of the assessee granted partial relief to the revenue by restricting the disallowance to 12.5% of the alleged non-genuine purchased in both the assessment years under dispute. Based on the disallowance/addition sustained by the Tribunal, the AO initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed orders imposing penalty of Rs. 5,18,560/- and Rs. 3,61,018/- in assessment years 2009-10 and 2010-11 respectively. While deciding assessee's appeals challenging imposition of penalty, learned Commissioner (Appeals) deleted the penalty imposed.

3. At the very outset, the learned Counsel for the assessee submitted that the appeals filed by the revenue are not maintainable due to low tax effect. As regards the merits, he strongly relied upon the observations of learned Commissioner (Appeals).

4. As regards the non-maintainability of the appeals due to low tax effect, learned Departmental Representative drew our attention to ground no. 3 and exceptions provided in paragraph 10(e) of CBDT Circular No. 2/2018 dated

11.07.2018. As far as merit of the issue is concerned, learned Departmental Representative relied upon the observations of the AO.

5. We have considered rival submissions and perused the material on record. As could be seen from record, based on certain information available on record, the AO had treated certain purchases as non-genuine and added back to the income of the assessee. However, learned Commissioner (Appeals) has restricted the disallowance to the profit element embedded in the alleged-non genuine purchases, which got further enhanced by the Tribunal. Thus, ultimately, the additions leading to the imposition of penalty were made on estimate basis. It is further evident from the assessment order, in response to the notice issued under section 133(6) of the Act, some of the selling dealers responded and furnished the details of sales made by them. Thus, the admitted factual position is, some of the dealers alleged to be non-genuine have confirmed the transactions with the assessee. Thus, from these facts, neither concealment of income nor furnishing of inaccurate particulars of income is proved. Therefore, in such scenario, no penalty under section 271(1)(c) of the Act could have been imposed.

6. Even, otherwise also, the present appeals of the revenue are not maintainable due to low tax effect. Undisputedly, the quantum in dispute in both the appeals is much less than the monetary limit of Rs. 50 lacs as per CBDT Circular No. 17/2019 dated 08.08.2019. It is the case of the revenue that the appeals are protected under paragraph 10(e) of CBDT Circular No. 2/2018 dated 11.07.2018. However, a careful reading of the relevant clause of the circular makes it clear that it is only applicable to the additions made based on information received from external sources like law enforcement agencies in the category of CBI, DRI etc. Presently, we dealing with proceeding for imposition of penalty under section 271(1)(c) of the Act which is independent from the assessment proceedings. Therefore, it cannot be said that the penalty imposed is based on information received from external sources as contemplated under paragraph 10(e) of the foretasted circular. That being the case, the present appeals are not maintainable due to low tax effect

as well. In view of the aforesaid, we uphold the order of learned Commissioner (Appeals) while dismissing the grounds raised.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 20th July, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021
Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai