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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 5636/MUM/2019
Assessment Year: 2010-11

Income Tax Officer-8(3)(1), Room No. 616, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	**Vs.**	M/s Thakker Chemicals Pvt. Ltd., 307, Mandvi Navjivan 121/127, Kazi Sayeed Street, Masjid, Mumbai - 400003 PAN: AAACT2753Q
(Appellant)		**(Respondent)**

Revenue by : Shri Vijay Kumar Menon (DR)
Assessee by : None

Date of Hearing: 28/06/2021
Date of Pronouncement: 20/07/2021

O R D E R

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against the order dated 31.05.2019 of learned Commissioner of Income Tax (Appeals)–14, Mumbai deleting the penalty imposed of Rs. 3,27,265/- under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2010-11.

2. When the appeal was called for hearing no one was present for the assessee to represent the case. Considering the nature of dispute, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. Briefly the facts are, the assessee is a resident company stated to be engaged in the business of trading in chemicals, bulk drugs and bulk drug intermediates. For the assessment year under dispute, assessee filed its return of income on 24.09.2010 declaring total income of Rs. 30,65,399/-. Subsequently, based on information received from Sales Tax Department, the

Assessing Officer (AO) having found that purchases worth Rs. 84,72,880/- are not-genuine, reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to prove the purchases. Though, the assessee filed some documentary evidences to prove the purchases, however, the AO was not convinced. Ultimately, he completed the assessment by disallowing the purchases of Rs. 84,72,880/-. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). Partly accepting assesses's submissions, learned Commissioner (Appeals) restricted the disallowance to 12.5%, being the profit element embedded in the purchases alleged to be non-genuine. Not being satisfied with the decision of learned Commissioner (Appeals), assessee went in further appeal before the Tribunal and the Tribunal granted further relief to the assessee by restricting the disallowance to 8%. However, before assessee's quantum appeal pending before the Tribunal could be disposed of, the AO initiated proceeding for imposition of penalty based on the addition sustained by learned Commissioner (Appeals) and ultimately passed an order imposing penalty of Rs. 3,27,265/-. The assessee challenged the imposition of penalty before learned Commissioner (Appeals). Taking note of the fact that the disallowance made by the AO because of alleged non genuine purchases was substantially reduced by the First Appellate Authority and thereafter by the Tribunal and the additions sustained by the appellate authorities was purely on estimate basis, The learned Commissioner (Appeals) deleted the penalty imposed.

4. We have considered the submissions of learned Departmental Representative and perused the materials on record. It is evident, primarily relying upon the information received from Sales Tax authorities; the AO has treated certain purchases as non-genuine and has disallowed them. However, learned Commissioner (Appeals) to some extent being convinced with the submissions of the assessee restricted the disallowance to the profit element embedded in the purchases, alleged to be non-genuine, by estimating at 12.5%, which was further reduced to 8% by the Tribunal. Thus, from the aforesaid facts it is very much clear that the appellate authorities had no doubt that the

assessee, indeed, had purchased the goods, though, may be from unverified sources. For this reason alone, the disallowance was restricted to the profit element, which may have been suppressed, that too, on purely estimate basis. Thus, such addition based on guess work/estimation cannot lead to imposition of penalty under section 271(1)(c) of the Act, as, neither concealment of income nor furnishing of inaccurate particulars of income is established. Thus, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the disputed issue.

5. Even, otherwise also, the present appeal of the revenue is not maintainable keeping in view CBDT Circular No. 17/2011 dated 08.08.2019, as, the tax effect on the amount disputed is less than the threshold limit of Rs. 50 lacs. We may further add, in our view, the appeal is not protected under any of the exceptions to the aforesaid circular. Thus, for this reason also the appeal deserves to be dismissed. Grounds are dismissed.

6. In the result, appeal is dismissed.

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

Sd/-	*Sd/-*
(RAJESH KUMAR)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021

Alindra, PS

<u>आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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**