

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकर अपील सं./ I.T.A. No.6466/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>ITO 28(3)(5),</b> R. No. 323, 3rd Floor Tower No. 6, Vashi Railway Station Complex, Navi Mumbai-400 703	<b>बनाम/ Vs.</b>	<b>Smt Usha B. Agarwal</b> Prop. Pankaj Steel Corporation, 42-A kaveri, Sector, 17, Vashi, Navi Mumbai-400 705
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AADPA-7722-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Ms. Usha Gaikwad, Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	29/07/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	29/07/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-26, Mumbai [CIT(A)] dated 08/07/2019 which has deleted the penalty of Rs.79,915/- u/s 271(1)(c) as levied by Ld. AO vide penalty order dated 28/06/2018. Though none appeared for assessee, however, the material

on record was sufficient enough for disposal of the appeal. The Ld. DR pleaded for restoration of the penalty.

2. The assessee was assessed u/s 143(3) r.w.s. 147 on 17/03/2015 wherein it was saddled with addition of Rs.18.80 Lacs on account of alleged bogus purchases. Upon further appeal, Ld. CIT(A) restricted the same to the extent of 12.5%. Consequently, impugned penalty of Rs.79,915/- was levied by Ld. AO vide order dated 28/06/2018. Upon further appeal challenging levy of penalty, Ld. CIT(A) deleted the same, inter-alia, by observing that the details filed by the assessee were not found to be inaccurate or false. Aggrieved, the revenue is in further appeal before us.

3. In our considered opinion, the impugned order would not require any interference on our part for two reasons. Firstly, the additions were merely estimated additions for unproved purchases and therefore, no case of concealment of income or furnishing of inaccurate particulars of income could be made out against the assessee. Secondly, the revenue's appeal is not maintainable in terms of latest low tax effect CBDT Circular No. 17/2019 dated 08/08/2019 [F.No.279/Misc. 142/2007-TTJ(Pt.)] which prescribes minimum threshold limit of Rs.50 Lacs for revenue to agitate the matter further before Tribunal. It is settled legal position that quantum proceedings and penalty proceedings are independent and distinct proceedings and confirmation of additions may not be the sole ground for confirming the penalty. Extending the same logic, unless specific exception is provided in the circular with respect to penalty also, it could not be construed that the penalty was to be treated at par with quantum additions. The clause 10(e) specifically applies only to additions which are based on information received from external

sources. The levy of penalty, by no stretch of imagination, could be construed as *addition* as envisaged by clause 10(e). Therefore, the submissions made by Ld. DR could not be honored and we decline to accept the same.

4. Resultantly, the appeal stand dismissed.

*Order pronounced on 29<sup>th</sup> July, 2021.*

*Sd/-*

**(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

*Sd/-*

**(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 29/07/2021  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**