

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.2346/Mum/2021
(Assessment Year :2010-11)**

&

**ITA No.2347/Mum/2021
(Assessment Year :2009-10)**

Dy. Commissioner of Income Tax-26(1) Room No.623, 6 th Floor Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai – 400 051	Vs.	M/s. Gopal Tukiram Agarwal 3/13, Mankhu Bhavan Khandwala Lane Malad (East) Mumbai - 400097
PAN/GIR No.AACPA8314P		
(Appellant)	..	(Respondent)

Revenue by	Ms. Samruddhi Hande
Assessee by	Shri Vijay R Taker
Date of Hearing	24/05/2022
Date of Pronouncement	26/05/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These appeals in ITA No.2346/Mum/2021 & 2347/Mum/2021 for A.Y.2009-10 & 2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) in order No.ITBA/NFAC/S/250/2021-22/1036536616(1) & ITBA/NFAC/S/250/2021-22/1036536632(1) dated 22/10/2021 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act (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. Accordingly, we dismiss this appeal of the Revenue by following the aforesaid Circular No.17/2019 dated 08/08/2019. Even on merits, we find that the Id. CIT(A) had deleted the penalty only in view of estimated addition. The law is well settled that no concealment penalty would be leviable on an estimated addition.

4. In the result, appeals of the Revenue are dismissed.

Order pronounced on 26/05/2022 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/05/2022
KARUNA, sr.ps

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