

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.5483/Mum./2019**

**(Assessment Year : 2009-10)**

Income Tax Officer  
Ward-9(2)(4), Mumbai

..... Appellant

v/s

M/s. Evergreen Water Technologies P. Ltd.  
A/303, Rajkamal CHS  
Versova Link Road, Andheri (West)  
Mumbai 400 061 PAN – AAACE6110E

.....Respondent

Assessee by : Shri Shyam Agarwal

Revenue by : Shri Pitta Samuel

Date of Hearing – 20/09/2022

Date of Order – 23/09/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 31/05/2019, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-16, Mumbai, [*"learned CIT(A)"*], for the assessment year 2009-10, which in turn, arose from the order dated 15/03/2018, passed by the Assessing Officer under section 271(1)(c) of the Act.

2. The present appeal has been listed for hearing before us pursuant to the order dated 01/07/2022, passed by the Co-ordinate Bench of the

Tribunal in ITO v/s Evergreen Water Technologies Pvt. Ltd., M.A. no.105/Mum./2022 (in ITA no.5483/Mum./2019, for the assessment year 2009–10), whereby, the earlier order dated 02/07/2021, passed under section 254(1) of the Act was recalled and appeal was directed to be re–fixed for hearing.

3. In this appeal, the Revenue has raised following grounds:–

*"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in:*

*Whether On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act.*

*The appellant prays that the order of the learned CIT(A) on the above grounds be set aside and that of the A.O. be restored."*

4. The only grievance of the Revenue in the present appeal is against deletion of penalty levied under section 271(1)(c) of the Act by the learned CIT(A).

5. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is a company and is engaged in the business of trading in Pool equipments. The assessee e–filed its return of income for the year under consideration on 27/09/2009, declaring total income at Rs.3,410. Pursuant to the information received from the DGIT (Inv.), Mumbai, for the year under consideration re–assessment proceedings were initiated in assessee’s case on the basis that the assessee has obtained bogus purchase amounting to Rs.16,99,816, from the parties whose names are appearing in the list of hawala dealers

issued by the Sales Tax Department, State of Maharashtra. Accordingly, vide order dated 19/03/2015, passed under section 143(3) r/w section 147 of the Act, the Assessing Officer made addition of Rs.2,12,477, being 12.5% of the total amount of Rs.16,99,816.

6. In further appeal, the learned CIT(A) dismissed the assessee's appeal against the aforesaid order passed under section 143(3) r/w section 147 of the Act.

7. Meanwhile, the penalty order dated 15/03/2018, was passed by the Assessing Officer under section 271(1)(c) of the Act wherein penalty of Rs.65,655, was levied on the basis that the assessee has furnished inaccurate particulars of income and thereby concealed its income within the meaning of section 271(1)(c) of the Act.

8. In further appeal against the penalty order, the learned CIT(A), vide impugned order dated 31/05/2019, allowed the appeal filed by the assessee on the basis that levy of penalty is merely on disallowance of expenditure and not concealment of any particulars or mala fide intention to reduce the taxable income. Being aggrieved, the Revenue is in appeal before us.

9. During the course of hearing, at the outset, the learned Authorised Representative ("*learned A.R*") submitted that the amount of penalty levied by the Assessing Officer under section 271(1)(c) of the Act is only Rs.65,655, and thus, the tax effect in Revenue's appeal is below the

revised monetary limit of Rs.50 lakh applicable to appeals before the Tribunal, as per CBDT Circular no.17 of 2019, dated 08/08/2019. Further, he submitted that none of the exceptions provided in CBDT Circular no.3 of 2018, dated 11/07/2018 r/w circular F. no.279/Misc./142/2007 IT)-(Pt) dated 20/08/2018, would apply to Revenue's appeal. Thus, the learned A.R. submitted that Revenue's appeal being covered under the aforesaid Circulars is not maintainable.

10. On the other hand, the learned Departmental Representative ("*learned D.R*") submitted that the assessment in assessee's case was re-opened on the basis of information received from the Sales Tax Department and, therefore, the present case falls within the exception provided in Para-10(e) of Circular no.279/Misc. 142/2007-ITJ (Pt), dated 20/08/2018, and accordingly the present appeal is maintainable.

11. Having considered the rival submissions and having perused the material available on record, we find that similar issue arose for consideration before the Co-ordinate Bench of the Tribunal in appeal being ITA no.6053/Mum./2019, order dated 19/04/2021, in DCIT v/s Aluvind Architectural Pvt. Ltd., wherein the Tribunal, while deciding the issue in favour of the tax payer, observed as under:-

*"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 and hold that the appeal of the Revenue is not maintainable."*

12. Since similar submissions have been made by both the parties in the present case, wherein levy of penalty of Rs.65,655, is under challenge, therefore, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal, we are of the view that the tax effect on the amount disputed by the Revenue in the present appeal is below the revised monetary limit of Rs.50 lakh, as per CBDT Circular no. 17/2019, dated 08/08/2019, r/w CBDT Circular no.3/2018, dated 20/08/2018. In view of the aforesaid, Revenue's appeal deserves to be dismissed.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 23/09/2022

**Sd/-**  
**AMARJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 23/09/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai