

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2458/Mum/2021 (A.Y. 2011-12)

Dy.CIT-26(1),
Room No. 623, 6th Floor,
Kautilya Bhavan, BKC,
Bandra (E), Mumbai-400051.

..... Appellant

Vs.

M/s Hindusta Mortar Lining LLP
Gala No.35, Shree Jee Ind. Estate,
Subhash Road, Jogeshwari (E),
Mumbai-400060.

PAN: AAFFH4358D

..... Respondent

Appellant by	:	Sh. Tejinder Pal Singh, Sr. DR
Respondent by	:	None
Date of hearing	:	14/07/2022
Date of pronouncement	:	26/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the Revenue is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ['NFAC'] dated 02.03.2021 passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as ['the Act'] for the Assessment Year (AY) 2011-12. The Revenue has raised the following grounds of appeal:

The following grounds of appeal are without prejudice to one another:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty u/s 271(1)(c) of Rs. 662,21/- which was levied on the addition of Rs. 2,14,308/- being 12.5% of the total bogus purchase of Rs. 17,14,461/-

2. On the facts and in the circumstance of the case and in law, the Ld. CIT(A) has erred in deleting the penalty u/s 271(1) (C) of Rs 662,21/- in spite of the penalty being levied on the amount of Rs. 2,14,308/- made on the basis of information received from DGIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assessee from entry providers without supply of actual goods and sound evidence.

3. On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the penalty u/s 271(1) (C) of Rs 662,21/- imposed in respect of difference between enhanced income confirmed by ITAT over and above the returned income based on evidences which prove that the assessee has debited purchases from parties which did not make actual supply of goods and, thereby, falsified the books of accounts.

4. The appellant craves leave to add, amend, alter vary and/or withdraws any of the ground of appeal.”

2. Brief facts of the case are that the assessee filed return of income declaring total income at Rs. 1,09,14,992/-. The case was assessed @ Rs. 2,27,59,454/- u/s 143(3) of the Act. Against the assessment order assessee preferred an appeal before the Ld. CIT(A)-42, Mumbai. Ld. CIT(A) restricted the addition to the extent of Rs. 17,14,461/- out of total addition made by the A.O amounting to Rs. 1,18,44,462/-.

3. Against this order of Ld. CIT(A) where he sustained the addition on account of bogus purchase amounting to Rs 17,14,461/-. Assessee further preferred an appeal vide ITA No 1539/M/2017. In this appeal co-ordinate bench of ITAT restricted the addition to the extent of 12.5% of Rs. 17,14,461/- amounting to Rs.

2,14,308/-. On this addition of Rs 214308/- A.O levied a penalty @100% on the amount of tax sought to be evaded i.e. Rs. 66,221/-. Against this penalty order assessee preferred an appeal before the Ld. CIT(A) where he deleted this penalty levied by the A.O on merits.

4. Against this order of Ld. CIT(A) deleting the penalty imposed, revenue is in appeal before us. Before going into the technicalities and merits of the case we would like to refer **CIRCULAR NO.3/2018 [F.NO.279/MISC.142/2007-ITJ (PT)] LETTER [F.NO.279/MISC.142/2007-ITJ (PT)]**

“SECTION 268A OF THE INCOME-TAX ACT, 1961 - FILING OF APPEALS OR APPLICATION FOR REFERENCE BY INCOME-TAX AUTHORITY - MEASURES FOR REDUCING LITIGATIONS BY REVISION OF MONETARY LIMITS FOR FILING OF APPEALS BY DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL, HIGH COURTS AND SLPs/APPEALS BEFORE SUPREME COURT - AMENDMENT IN CIRCULAR NO.3/2018 [F.NO.279/MISC.142/2007-ITJ (PT)], DATED 11-7-2018

LETTER [F.NO.279/MISC.142/2007-ITJ (PT)], DATED 20-8-2018

Kindly refer to the above.

2. *The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been revised by Board's Circular No. 3 of 2018 dated 11.07.2018.*

3. *Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No. 3 of 2018 dated 11.07.2018 is hereby amended as under:*

*"10. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

(a)	<i>Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or</i>
(b)	<i>Where Board's order, Notification, Instruction or Circular has been held to be</i>

	<i>illegal or ultra vires, or</i>
(c)	<i>Where Revenue Audit objection in the case has been accepted by the Department, or</i>
(d)	<i>Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.</i>
(e)	<i>Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).</i>
(f)	<i>Cases where prosecution has been filed by the Department and is pending in the Court."</i>

4. The said modification shall come into effect from the date of issue of this letter.
5. The same may be brought to the knowledge of all officers working in your region.
6. This issue with the approval of the Hon'ble Finance Minister."

5. in view of the above circular mentioned supra and keeping in view the latest limit as prescribed by board i.e. tax effect of Rs. 50 lacs, amount involved in this appeal in terms of tax effect i.e., Rs. 66,221/- is far below than the prescribed limit. Further the appeal of the department is not following in any of the exception as provided in clause-10 of the above circular hence the same is not admissible on this ground.

6. **In the result, appeal filed by the Revenue is dismissed.**

Order pronounced in the open court on 26th day of September, 2022.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 26th /09/2022
SK, Sr.PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai