

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1544/Mum./2022
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax
Circle-1, Thane

..... Appellant

v/s

Shri Gangasagar Sitaram Mallah
Prop. Of M/s Logic Automation,
Lokmanya Nagar No.4,
Thane 400 606 PAN – AMXPM9932G

.....Respondent

Assessee by : None
Revenue by : Smt. Mahita Nair

Date of Hearing – 30/08/2022

Date of Order – 20/10/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 22/03/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2010-11, which in turn, arose from the order dated 13/03/2018, passed by the Assessing Officer under section 271(1)(c) of the Act.

2. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceed to dispose off this appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. 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).

4. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is an individual and is engaged in business of trading of machinery and equipments. The assessee e-filed its return of income for the year under consideration on 28/09/2010, declaring total income at Rs. 14,18,990. Pursuant to the information received from the Sales Tax Department, Maharashtra, re-assessment proceedings were initiated, for the year under consideration, in assessee's case on the basis that the assessee has obtained bogus purchase bills amounting to Rs. 4,98,389, from the party who is a hawala dealer and merely provides entries to its beneficiaries. Accordingly, vide order dated 26/02/2014, passed under section 143(3) r/w section 147 of the Act, the Assessing Officer made addition of entire amount of Rs. 4,98,389 to the total amount of the assessee.

5. 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. The assessee did not file further appeal.

6. Meanwhile, the penalty order dated 13/03/2018, was passed by the Assessing Officer under section 271(1)(c) of the Act wherein penalty of Rs. 1,54,002, was levied on the basis that the assessee has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act.

7. In further appeal against the penalty order, the learned CIT(A), vide impugned order dated 22/03/2022, allowed the appeal filed by the assessee and deleted the penalty levied under section 271(1)(c) of the Act. Being aggrieved, the Revenue is in appeal before us.

8. During the course of hearing, at the outset, it was noticed that the amount of penalty levied by the Assessing Officer under section 271(1)(c) of the Act is only Rs. 1,54,002, 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, 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, Revenue's appeal being covered under the aforesaid Circulars is not maintainable.

9. The learned DR 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.

10. Having considered the 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."

11. Since similar submissions have been in the present case, wherein levy of penalty of Rs. 1,54,002, 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.

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

Order pronounced in the open Court on 20/10/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/10/2022

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