

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI**

**BEFORE SHR BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 3820/Del/2019
(Assessment Year: 2008-09)

M/s. Punjab Metal Store, 2196/4, Bagichi Raghunath, Sadar Bazar, Delhi – 110 006. PAN: ACKPN1164A	Vs.	ITO, Ward-63 (3), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Umang Luthra, Adv.;
Department by :	Shri Rajesh Kumar, Sr. DR;
Date of Hearing	03/02/2021
Date of pronouncement	03/02/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld. CIT (Appeals)-20, New Delhi, dated 18.03.2019 wherein the ld. CIT (Appeals) has confirmed the levy of the penalty of Rs.6,09,970/- under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) levied by the Income Tax Officer, Ward 63 (3) New Delhi, dated 29.09.2016 for the Assessment Year 2008-09.
2. The assessee has raised the following grounds of appeal:-
 1. *On the facts and circumstances of the case, the order passed by the Learned Commissioner of Income Tax (Appeals) (CIT(A)) is bad both in the eyes of law and on facts.*
 2. *On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the action of the AO levying penalty amounting to Rs. 6,09,970/- u/s 271(1)(c) of the Income-tax Act.*
 3. *On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming penalty on the additions of Rs. 19,74,026/- made on account of bogus purchases in the order passed under section 143(3)/ 147 of the Income-tax Act.*
 4. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming penalty levied by AO despite the fact that the additions itself are not tenable in law.*
 5. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts*

and in law in confirming the penalty levied by AO despite the fact that the penalty was levied by the AO without giving any finding as to the merits of the case on concealment of income as well as furnishing of inaccurate particulars of income.

6. *On the facts and circumstances of the case the learned CIT (A) has erred both on facts and in law in ignoring the contention of the assessee that the penalty proceedings are independent proceedings, as such mere addition does not lead to levy of penalty.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied despite the fact that the notice issued by AO u/s 274 read with section 271(1)(c) of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO despite the fact that the AO has passed the penalty order without specifying the allegation whether the penalty is being levied for concealment or for furnishing of inaccurate particulars of income.*
9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty despite the fact that there is neither concealment nor furnishing the inaccurate particulars by the assessee.*
10. *The appellant craves leave to add, amend, or alter any of the grounds of appeal. “*

3. The facts of the case shows that assessee filed its return of income on 26.09.2008 at an income of Rs.1,56,005/-. Later on the case of the assessee was reopened on the basis of the information wherein the assessee was found to be benefitted for a sum of Rs.19,74,026/-. Consequently assessment order under Section 147 read with Section 143(3) of the Act was passed on 18th March, 2016 wherein the addition of Rs.19,74,026/- was made on account of bogus purchases assessing the total income of the assessee at Rs.21,30,031/-. Simultaneously the penalty proceedings were also initiated under Section 271(1)(c) of the Act for furnishing inaccurate particulars of its income. This addition was ultimately challenged by the assessee after confirmation by the Id. CIT (Appeals) vide order dated 11th March, 2019 before the SMC-II Bench, New Delhi, in ITA. No. 3819 (Del) of 2019. The SMC Bench passed an order on 20.01.2019 wherein the re-opening of the assessment in the case of the assessee for the impugned assessment year was quashed based on the order of the co-ordinate bench in assessee's own case for assessment year 2006-07. Thus, the original addition based on which the penalty was levied was quashed.
4. Meanwhile the Id. Assessing Officer levied penalty by order dated 29.09.2016 under Section 271(1)(c) of the Act levying penalty of Rs.6,09,970/-. The order of the penalty was further challenged by the

assessee before the Id. CIT (Appeals), who passed an order on 18th March, 2019 dismissing the appeal of the assessee. The Id. CIT (Appeals) confirmed the penalty for the reason that the original assessment containing the above addition was also confirmed by the CIT (Appeals). Thus the assessee is in appeal before us.

5. The Id. AR submitted that since the quantum addition on the basis of which said penalty proceedings were initiated and on which the penalty has been imposed has already been deleted by the co-ordinate bench and further the appeal against the order of the co-ordinate bench cannot be preferred by the Revenue in view of low tax effect, the deletion of the quantum addition is confirmed and, therefore, the penalty also now cannot be sustained.
6. The Id. DR was also confronted with the fact that when the addition has itself been deleted and now has become final, penalty cannot be sustained, he relied upon the order of the lower authorities.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case the quantum addition made by the Id. Assessing Officer on which the penalty has been levied has already been deleted by the Tribunal, which has now become final we are of the view that now the cause for the levy of the penalty does not continue. In view of these facts, we reverse the orders of the lower authorities and direct the Id. Assessing Officer to delete the penalty of Rs.6,09,970/- levied under Section 271(1)(c) of the Act. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 03/02/2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 03/02/2021.

MEHTA

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1. Appellant
2. Respondent
3. CIT

4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	3.02.2021
Date on which the typed draft is placed before the dictating member	3.02.2021
Date on which the typed draft is placed before the other member	3.02.2021
Date on which the approved draft comes to the Sr. PS/ PS	3.02.2021
Date on which the fair order is placed before the dictating member for pronouncement	3.02.2021
Date on which the fair order comes back to the Sr. PS/ PS	3.02.2021
Date on which the final order is uploaded on the website of ITAT	3.02.2021
date on which the file goes to the Bench Clerk	3.02.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

