

IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"A" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER

ITA NOS. 1656 & 1657/MUM/2020
(A.Ys: 2006-07 & 2007-08)

Dy.CIT – Central Circle – 7(3) Room No. 655, Aayakar Bhavan M.K. Road, Mumbai - 400020	v.	M/s. ACG Arts & Properties Pvt. Ltd., 1001, Dalamal House 10 th Floor, Nariman Point Mumbai -400021 PAN: AAACU0615L
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Brajendra Kumar
Date of Hearing	:	21.09.2021
Date of Pronouncement	:	01.10.2021

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the Revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.01.2020 for the A.Y. 2006-07 and A.Y. 2007-08.

2. The only grievance of the Revenue in these appeals is that the Ld.CIT(A) deleted the penalty levied u/s. 271(1)(c) of the Act on the ground that quantum additions/disallowance were deleted by the Hon'ble ITAT vide a combined order dated 23.03.2018 in ITA.No. 1238/Mum/2012 for the A.Y. 2006-07 and ITA.No.3778/Mum/201 for the A.Y. 2007-08.

3. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, we proceed to dispose off these appeals on hearing Ld.DR on merits.

4. Ld. DR fairly submitted that in this case the Hon'ble Bench had deleted the additions/disallowances made in the Assessment Order passed u/s.143(3) of the Act. Ld. DR further submitted that revenue filed an appeal before the Hon'ble High Court challenging the order of the Tribunal. Therefore, Ld. DR requested to set-aside the order of the Ld.CIT(A).

5. We have heard the rival submissions, perused the orders of the authorities below. It is the finding of the Ld.CIT(A) that the Tribunal had deleted the additions/disallowances made in the quantum proceedings vide a combined order dated 23.03.2018 in ITA.No. 1238/Mum/2012 for

the A.Y. 2006-07 and ITA.No.3778/Mum/201 for the A.Y. 2006-07 and A.Y. 2007-08. The Tribunal in quantum proceedings deleted the addition observing as under: -

"7. We have carefully considered the rival submissions. In the instant, the case made out by the Assessing Officer is that the purchase of paintings by the assessee is unproved. Factually speaking, the existence of the paintings and the same being in the possession of the assessee, is not in dispute, inasmuch as, all the paintings in question, except one (which has been sold during the year) are available as a part of the closing stock. In fact, the crux of the dispute is with regard to the point of purchase of the paintings. The depositions of the stated suppliers/sellers have been relied upon by the Revenue to contend that no such paintings were indeed sold/supplied by them to the assessee. Notably, assessee demonstrated before the lower authorities that the consideration paid to such sellers/suppliers was through account payee cheques, which stood ultimately credited in the accounts of such suppliers/sellers. Our Coordinate Bench in the case of ACG Capsules Pvt. Ltd.(supra) in **similar circumstances held that "we do not find any merit for adding the amount of paintings in the assessee's income when the source of funds for making such purchase was not in dispute, nor the physical form of paintings."** In the case of M/s. Kavita Singh (Proprietor of Reflections) (supra) also similar situation prevailed and the addition made on account of unproved purchases was deleted. In coming to such decision, the Bench noted that **"the right of cross examination which was prayed for by the assessee was also not allowed to her. If this opportunity would have been given, the picture would probably much more clear.**

7.1 Now, we may briefly touch upon the statement of the suppliers/sellers relied upon by the Revenue. The case made out is that the stated suppliers/sellers of paintings of the assessee received cheques and after clearance withdrew the cash and after deducting their commission, balance of cash was handed over to the person who came with the cheques. The suppliers also stated that they were in the business of bill discounting and adjustment transactions. It has also been pointed out that the stated suppliers/sellers are not in the business of paintings and therefore, the transaction of purchase as canvassed by the assessee is not proved. In this context, we find that there not enough material with the Revenue to establish that the purchase of paintings is per-se bogus, as our subsequent discussion would show. Pertinently, existence of the transaction between

assessee and the stated suppliers/sellers cannot be doubted, inasmuch as, the consideration has flown from the assessee to such parties by account payee cheques, which stand cleared to the credit of the bank account of such suppliers. While we agree with the reasoning of the Ld. Departmental Representative that payment by account payee cheques by itself does not prove genuineness of the transaction but in the instant case more is required to prove that the transaction was bogus. We say so for the reason that in the present case, the existence of paintings in the possession of the assessee, of-course, except one which has been sold, is not in dispute. The statement of the stated suppliers/sellers does not prove that the **consideration going out of the assessee's bank account has come back to the assessee in the form of cash.** Quite clearly, even the statement given by the stated suppliers/sellers only say that cash was returned by them to the person who gave them the cheques; there is uniformity in the statements on the aforesaid aspect. At this point, we may like to emphasize that it was for the Revenue to establish the link, if any, between the person who is stated to have received back the cash from the stated suppliers/sellers and the assessee. It is in this background, one has to appreciate the reasoning given by our Co-ordinate Bench in the case of M/s. Kavita Singh (Proprietor of Reflections) (supra) that right of cross examination of the suppliers ought to have been allowed. If the aforesaid exercise would have been done, the complete picture would have emerged. Otherwise, the only prudent inference that can be drawn is that the paintings in question have indeed been purchased, because they exist in the possession of the assessee; and, at best the purchases had been effected from some other parties and not the stated suppliers/sellers. In fact, as per the given state of verification, it can also be a probability that stated suppliers/sellers have acted for and on behalf of the actual sellers of paintings to the assessee and if that be so then no fault can be found with the transaction carried out by the assessee. Therefore, for all these reasons, we say that there is not enough material with the Revenue to treat the purchase transaction as bogus or not proved. Be that as it may, in our considered opinion, we find no justifiable reason to depart from the conclusion drawn by our Co-ordinate Benches in the cases of Mrs. Kavita Singh (Proprietor of Reflections) (supra) and ACG Capsules Pvt. Ltd. (supra), wherein also similar stand of the Revenue, qua purchase of paintings found in the search, has been found to be unsustainable. In the case of Nepean Holdings Pvt. Ltd. Holdings (supra) the Tribunal also found it fit to follow the earlier decision in the case of Mrs. Kavita Singh (Proprietor of Reflections) (supra) in deleting similar additions.

7.2 In fact, with regard to one of the transaction, wherein one painting has been sold and profit thereof has been credited in the P&L

Account, there is nodoubt about the sale made. The Ld.Representative for the assessee is quite justified in invoking the ratio laid down by the Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises (P) Ltd.(supra), in such a situation, to canvass that where sale of purchased goods is not doubted, the corresponding purchases could not be construed as bogus. 7.4 For all the above reasons, we deem it fit and proper to set-aside the order of CIT(A) and direct the Assessing Officer to delete the impugned addition. Thus, on this aspect assessee succeeds.

ITA No.3778/Mum/2012:

8. At the time of hearing, it was a common point between the parties that so far as appeal in ITA No.3778/Mum/2012 for assessment year 2007-08 is concerned, the issue raised is similar to the Grounds of appeal dealt with by us in ITA No.1238/Mum/2012 for assessment year 2006-07. As a consequence, our decision in ITA No.1238/Mum/2012 for assessment year 2006-07 shall apply mutatis mutandis in the appeal for assessment year 2007-08 also."

6. Since the addition made in the quantum proceedings was deleted by the Tribunal, the Ld.CIT(A) followed the order of the Tribunal and deleted the penalty for both these assessment years. While deleting the penalty for the A.Y. 2006-07, Ld.CIT(A) observed as under: -

*"6.2 I have considered the facts of the case. It is found that Hon'ble ITAT vide a combined order dated 23.03.2018 in ITA No. 1238/Mum/2012 for AY 2006-07 and ITA No. 3778/Mum/2012 for AY 2007-08, has deleted the addition made by the AO for the Assessment years 2006-07 in respect of which the impugned penalty has been levied. Since, the quantum addition has been deleted by the Hon'ble ITAT, thus there remains **no addition on which the penalty has been levied and consequently the penalty cannot stand or be upheld on its own. Accordingly the penalty of Rs.65,00,000/- levied by the AO is directed to be deleted. Ground is allowed.**"*

7. On a perusal of the order of the Ld.CIT(A) we do not find any infirmity in deleting the penalty since the very basis for levy of penalty i.e.

addition made in the assessment proceedings was deleted by the Tribunal and in which case penalty will not survive. Hence the Ld.CIT(A) rightly deleted the penalty. Thus, we confirm the order of the Ld.CIT(A) in deleting the penalty for both these Assessment Years. Ground raised by the Revenue is rejected.

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

Order pronounced on 01.10.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER
Mumbai / Dated 01.10.2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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, Mum