

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI D. KARUNAKARA RAO, AM  
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.914/PUN/2015  
निर्धारण वर्ष / Assessment Year : 2008-09

Klassic Wheels Private Ltd.,  
L-2, MIDC Area,  
Ahmednagar-414001.

PAN : AABCK3834G

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Ahmednagar Circle,  
Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. K. Kulkarni  
Revenue by : Shri (Dr.) Bhushan Patil

सुनवाई की तारीख / Date of Hearing : 03.10.2019  
घोषणा की तारीख / Date of Pronouncement : 03.10.2019

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal is filed by the assessee against the order of CIT(A)-2, Pune dated 27.02.2015 for the Assessment Year 2008-09. Appeal relates to the issue of levy of penalty u/s 271(1)(c) of the Act on the enhancement addition made by the Id. CIT(A) to the tune of Rs.1,24,53,000/-. The Assessing Officer levied the penalty on the said enhanced income and the CIT(A) confirmed the same.

2. Briefly stated the relevant facts include that the assessee is running a manufacturing unit of wheel rims for two & three wheelers and auto components etc. The assessee filed the return of income declaring loss of (-) Rs.4,06,00,973/-. The assessment was finalised at a total loss of Rs.3,26,54,718/-. The assessee challenged the assessment order before the CIT(A), who enhanced the addition to Rs.1,24,53,000/-. Consequently, the

Assessing Officer initiated the penalty proceedings and levied the penalty of Rs.47,80,603/- u/s 271(1)(c) of the Act on the said enhanced addition of Rs.1,24,53,000/-. The CIT(A) confirmed the same.

3. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before us.

4. Before us, at the outset, ld. Counsel for the assessee filed a copy of the order of Pune Bench of the Tribunal in assessee's own case vide ITA No.2184/PUN/2013 for the assessment year 2008-09 dated 16.09.2019 on the quantum addition. The ld. AR submitted that the Tribunal in the said case overturned the impugned order of the CIT(A) and deleted the said enhanced addition of Rs.124.53 lakh made by the CIT(A) on account of prior period expenditure. Referring to the said order of the Tribunal (supra), the ld. Counsel submitted that since the **Tribunal deleted the said addition** and therefore, penalty does not survive. The contents of para 7 of the order of the Tribunal (supra) are relevant in this regard.

5. On the other hand, ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A).

6. We heard both the sides on this limited issue of sustainability of penalty when the related addition is deleted by the Tribunal. On perusing the order of the Tribunal in assessee's own case (supra), we find the Tribunal in the said decision deleted the enhanced income made by the CIT(A). For the sake of completeness, the contents of para 7 of the order of the Tribunal (supra) are relevant and the same are extracted hereunder :-

*"7. Under the mercantile system of account, a deduction is allowed when contractual liability to pay finally arises. The Hon'ble Delhi High Court in National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED) vs.*

*CIT (2011) 338 ITR 36 (Del) has held that a contractual liability is incurred when enforceable liability of the assessee to pay is determined. Unless there is a contrary separate provision, the amount becomes deductible at that time, even if it pertains to earlier years. When we view the facts of the instant case, it clearly emerges that the assessee did not accept the liability of Rs.144.99 lakh on account of bills raised by Kinetic Engineering Ltd. for the A.Y. 2007-08. The dispute was finally settled in the year under consideration at a figure of Rs.124.53 lakh. It is at this stage that the liability to pay can be said to have finally arisen. Once the liability to pay arose in the year relevant to the assessment under consideration, the same has to be allowed as deduction. We, therefore, **overturn the impugned order and delete the enhancement of Rs.124.53 lakh made by the ld. CIT(A) by treating it as prior period expenditure.**"*

7. Thus, the related addition stands deleted. Considering the above finding of the Tribunal (supra) on this issue, we are of the opinion, since the Tribunal deleted the addition, related penalty does not survive. Thus, the grounds raised by the assessee on this issue are allowed in favour of the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on 03<sup>rd</sup> day of October, 2019.

**Sd/-**

**(PARTHA SARATHI CHAUDHURY)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

**(D. KARUNAKARA RAO)**  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> October, 2019

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr. CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.