

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D” MUMBAI**

**BEFORE SHRI G. MANJUNATHA (ACCOUNTANT MEMBER)
AND SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA Nos.973/MUM/2018
(Assessment Years: 2001-02)**

Denim Clinic, A-5, Veena Tower,
Veena Nagar, Phase II, Bal
Rajeshwar Extension Road,
Mulund (W), Mumbai – 400 080.

Vs. Income-tax Officer – 29(1093),
Mumbai, C-10, Pratyakshakar
Bhavan, BKC, Bandra (E),
Mumbai - 400 051.

(Appellant)

(Respondent)

PAN : AACFD5250D

Assessee by : Ms. Hiral Sejpal, A.R
Revenue by : Ms. Jyotilaxmi Nayak, D.R

Date of Hearing : 12/12/2019
Date of pronouncement : 13/12/2019

ORDER

RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-40, Mumbai for A.Y.2001-02, which in turn arises from the order passed by the A.O under Se. 271(1)(c) of the Income-tax Act, 1961 (for short ‘Act’). The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income tax (Appeal)-40, Mumbai [“the CIT(A)”] erred in confirming the penalty levied by the Income-tax Officer – 23(2)(2) [‘the AO’] u/s 271(1)(c) of the Income Tax Act, 1961 (“the Act”) amounting to Rs. 4,85,416/-.”

2. Briefly stated, the assessee firm which is engaged in the business of running a garment laundry had filed its return of income for A.Y 2001-02 on 31.10.2001, declaring its total income at Rs. 2,90,810/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. The A.O while framing the assessment had inter alia disallowed the

unsubstantiated 'Fuel charges' aggregating to Rs. 12,38,304/-, which were claimed by the assessee to have been paid to two parties viz. (i).M/s Oasis Enterprises : Rs. 7,62,650/- ; and (ii) M/s Sweta Enterprises : Rs. 4,75,654/-, and assessed the income vide his order passed under Sec. 144, dated 22.12.2003 at an amount of Rs. 32,13,950/-.

3. Aggrieved, the assessee assailed the assessment order before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee sustained the addition of Rs. 12,38,304/-.

4. After the receipt of the order of the CIT(A), the A.O called upon the assessee to explain as to why penalty under Sec. 271(1)(c) may not be imposed as regards the disallowance of 'Fuel charges' of Rs. 12,38,304/-. As the reply filed by the assessee did not find favour with the A.O, therefore, he vide his order dated 24.03.2006 imposed a penalty of Rs. 4,85,416/- under Sec. 271(1)(c) of the Act.

5. Observing that the assessee had raised a bogus claim of expenditure in its return of income, the CIT(A) upheld the penalty imposed by the A.O u/s 271(1)(c) and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorised representative (for short 'A.R') for the assessee, at the very outset of the hearing of the appeal submitted that the quantum appeal of the assessee had been way back restored by a coordinate bench of the Tribunal, viz. ITAT "J" Bench, Mumbai, to the file of the CIT(A), vide its order passed in M/s Denim Clinic Vs. ITO 23(2)(2), Mumbai [ITA No. 2632/Mum/2005; dated 17.03.2008] (copy placed on record). Observing, that the CIT(A) without confronting the 'remand report', dated 09.12.2004 which was obtained by him in the course of the quantum appellate proceedings, had without confronting the same to the assessee therein acted upon it and confirmed the disallowance made by the A.O, it was submitted by the Id. A.R that the tribunal in all fairness had restored the matter vide its order dated 17.03.2008 to the file of the CIT(A), with a direction to readjudicate the same after affording sufficient opportunity to the

assessee. It was submitted by the Id. A.R that though a substantial time period of more than 10 years had lapsed, however, the matter pursuant to the directions of the tribunal, vide its order dated 17.03.2008 had not been disposed off and is still pending before the CIT(A).

7. Per contra, the Id. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R, that as the assessee had raised a bogus claim of expenditure, therefore, the A.O had rightly imposed the penalty under Sec. 271(1)(c), which thereafter had been sustained by the CIT(A).

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the records, the quantum appeal of the assessee had been restored by a coordinate bench of the Tribunal, viz. **ITAT "J" Bench, Mumbai**, to the file of the CIT(A), way back vide its order passed in **M/s Denim Clinic Vs. ITO 23(2)(2), Mumbai [ITA No. 2632/Mum/2005; dated 17.03.2008]**. As the CIT(A) without confronting the 'remand report', dated 09.12.2004 which was obtained by him in the course of the quantum appellate proceedings, had acted upon it and confirmed the disallowances made by the A.O, therefore, the tribunal vide its aforesaid order dated 17.03.2008 had restored the matter to the file of the CIT(A), with a direction to redecide the same after affording sufficient opportunity to the assessee to rebut the evidence that was gathered by the department. In our considered view, as the quantum assessment had been restored by the tribunal to the file of the CIT(A), therefore, we deem it fit to restore the order passed by the A.O imposing penalty under Sec. 271(1)(c), which is inextricably interwoven and interlinked to the quantum assessment, to the file of the CIT(A), who is directed to dispose off the same after adjudicating the quantum appeal of the assessee which we are informed is pending before him as on date.

9. Before parting, we may herein observe, that as informed by the Id. A.R, despite lapse of a substantial time period of more than 10 years from the date of the order of the Tribunal viz. 17.03.2008, the CIT(A) had yet not given effect to the directions of the tribunal and readjudicated the issue. As a result thereof, the present appeal of the assessee against the penalty imposed

under Sec. 271(1)(c), left with no choice, had also to be restored by us to the file of the CIT(A), which thus had resulted into multiplicity of litigations and had pushed the assessee into prolonged litigation. In the backdrop of the aforesaid peculiar circumstances of the case, we herein direct the CIT(A) to dispose off the quantum appeal which is pending before him for more than last 10 years , as it is only then that the present appeal of the assessee against the order imposing penalty under Sec. 271(1)(c) as had been restored by us to his file can thereafter be disposed off.

9. Resultantly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13.12.2019

Sd/-

(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 13.12.2019

PS. Rohit

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.

