

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 1086/MUM/2019** : **A.Y : 2009-10**

M/s. Aarti Industries Ltd.,  
2<sup>nd</sup> floor, Udyog Kshetra, Mulund  
Goregaon Link Road, Mulund (W),  
Mumbai 400 080.

vs. Dy. CIT – 15(1)(1), Mumbai.  
(Respondent)

**PAN : AABCA2787L** (Appellant)

**Appellant by** : **Shri Anuj Kisnadwala**  
**Respondent by** : **Shri Michael Jerald**

**Date of Hearing** : **06/02/2020**  
**Date of Pronouncement** : **17/06/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the assessee is directed against order of learned CIT(A) dated 16.11.2018 and pertains to assessment year 2009-10. The issue raised is that learned CIT(A) erred in sustaining the penalty under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') amounting to Rs.66,34,096/- on account of the following disallowance:-

- i) disallowance under Section 14A;
- ii) disallowance under Section 14A while computing the book profit under Section 115JB of the Act;

- iii) disallowance of prior period expenses under Section 40(a)(ia) of the Act;
- iv) disallowance on account of unreconciled difference in AIR;
- v) disallowance on account of depreciation on non-existing assets.

2. We have heard both the parties and perused the records. Learned counsel for the assessee submitted that the penalty confirmation order of the learned CIT(A) is without considering the ITAT order in the appeal by the assessee in ITA No. 7039/Mum/2014 in quantum proceeding. He submitted that ITAT has granted substantial relief to the assessee. Learned counsel submitted that while ITAT has granted relief on account of disallowance under Sections 14A and 40(a)(ia) of the Act, other issues have been remitted back to the Assessing Officer.

3. On the other hand, the learned Departmental Representative did not dispute the proposition that the confirmation of penalty order is without considering the decision of the ITAT in the quantum proceedings.

4. Upon careful consideration on the facts and circumstances of the case, we are of the considered opinion that on the issues which ITAT has deleted the disallowance, the penalty thereon does not survive. The issue on which the ITAT in quantum proceedings has remitted the matter to the file of Assessing Officer, the penalty with regard to them also needs to be remitted to the file of the Assessing Officer. With respect to the matters remitted by the ITAT in quantum proceedings, the Assessing Officer shall consider the issue of penalty afresh after passing the consequential order upon the ITAT order. We direct and order accordingly.

5. In the result, this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in court on 17<sup>th</sup> day of June, 2020 under Rule 34(4) of ITAT Rules.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 17<sup>th</sup> June, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai