

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
[Before Hon’ble Shri P.M. Jagtap, V.P (KZ) and Hon’ble Shri A. T. Varkey, JM

**ITA No. 792/Kol/2018**  
Assessment Year: 1998-99

Satya Hari Samui PAN: ALAPS 2193R	Vs.	Income Tax Officer, Ward 46(4), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	08-10-2020
Date of Pronouncement	14-10-2020
For the Appellant	Shri Soumitra Choudhury, Advocate, Ld.AR
For the Respondent	Shri Jayanta Khanra, JCIT, Ld. Sr.DR

**ORDER**

**Shri A. T. Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A),14, Kolkata dated 21-02-2018 for the assessment year 1998-99.

2. At the outset itself, Shri Soumitra Choudhury, Advocate, Learned Authorised Representative ( in short, the ‘Ld.AR) brought our notice that in the quantum appeal preferred by the assessee against the order(s) of the AO/Ld. CIT(A) for AY 1998-99 has been set aside back to the file of the AO for fresh adjudication on certain direction given by an order dated 09-09-2020 in ITA No. 606/Kol/2017 in assessee’s own case. Therefore, according to the Ld. AR since the provisions for imposing penalty has been removed by the Tribunal (supra), the penalty will not survive.

3. Per contra, Shri Jayanta Khanra, JCIT, Learned Sr.DR ( in short, the ‘ Ld. DR’) opposing vehemently the said plea of the assessee contended that even though the Tribunal has remitted the issue back to the AO for fresh adjudication. However, there should be at liberty to the AO to initiate the penalty proceedings as per law, if any, addition(s) is made as per law.

4. We have heard both the parties and perused the records. We note that in the quantum assessment in assessee's own case for the AY 1998-99 (supra) has been set aside back to the AO for fresh assessment by an order dated 09-09-2020 (supra). Since this fact could not be controverted by the Ld. DR ( copy of the said order dated 09-09-2020 is available on record), we note that vide order dated 09-09-2020 in assessee's own case (supra) for the AY under consideration the Tribunal has remitted the issue back to the AO for fresh assessment. In the backdrop of this scenario, we note that the penalty u/s. 271(1)( c) cannot survive when the basis/foundation has gone. Therefore, we cancel the impugned penalty imposed by the AO vide his order dated 27-09-2016. However, the AO is at liberty to initiate penalty proceeding if law permits in accordance with law after making fresh assessment.

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

Order is pronounced in the open court on 14 October, 2020.

Sd /-  
( P.M. Jagtap)  
Vice President (KZ)

Sd /-  
(Aby. T. Varkey)  
Judicial Member

Dated : 14 October, 2020

\*\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant /Assessee: Satya Hari Samui Dharsa Colony P.O G.I.P Colony, Ramrajatala, Howrah-711 112.
2. Respondent /Department: The I.T.O. W-46(4), 2 Govt Place (West), Kolkata.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar