

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
&
Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 517/KOL/2020
Assessment Year: 2016-2017**

***United Teleservices Limited,.....Appellant
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069
[PAN:ACRPA2275J]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
Circle-12(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Subash Agarwal, Advocate, appeared on behalf of the assessee
Shri Devi Saron Singh, CIT, appeared on behalf of the Revenue*

Date of concluding the hearing : July 15, 2021

Date of pronouncing the order : July 20, 2021

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 31.08.2020, whereby he imposed a penalty of Rs.6,10,78,620/- under section 271(1)(c) of the Income Tax Act, 1961.

2. The assessee in the present case is a Company, which filed its return of income for the year under consideration on 31.10.2016 declaring total income of Rs.2,50,56,290/-. In the assessment completed under section 143(3) vide an order dated 19.12.2018, the total income of the assessee was determined by the Assessing Officer at Rs.2,70,03,840/- after making certain additions/disallowances.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was noted by the Id. CIT(Appeals) that the assessee-company had inflated its claim for purchases made during the year under consideration and this aspect was not taken into consideration by the Assessing Officer while completing the assessment under section 143(3). He, therefore, issued an enhancement notice to the assessee-company. In reply to the said notice, a submission was made on behalf of the assessee offering its explanation in the matter and since the same was not found to be satisfactory by him, the Id. CIT(Appeals) proceeded to enhance the income of the assessee by Rs.20,35,95,402/- on account of the alleged inflated purchases vide his appellate order dated 11.02.2020. He also initiated the penalty proceedings under section 271(1)(c) in respect of the income of the assessee-company as enhanced by him on account of inflated purchases and since the explanation offered by the assessee in response to the show-cause notice issued by him during the course of penalty proceedings was not found acceptable, the Id. CIT(Appeals) proceeded to impose penalty of Rs.6,10,78,620/- under section 271(1)(c) being 100% of the tax sought to be evaded by the assessee-company on the income of Rs.20,35,95,402/- representing the alleged inflated purchases. Aggrieved by the order of the Id. CIT(Appeals) imposing penalty under section 271(1)(c), the assessee-company has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the entire addition made by the Id. CIT(Appeals) by way of enhancement of income on account of alleged inflated purchases was challenged by the assessee in the quantum appeal filed before the Tribunal and the Tribunal vide its order dated 17.02.2021 passed in ITA

No. 248/KOL/2020 has set aside the order of the Id. CIT(Appeals) dated 11.02.2020 and restored the issue relating to the alleged inflated purchases of Rs.20,35,95,402/- to the file of the Assessing Officer with a direction to decide the same afresh on merit after verifying the relevant details and documents produced/to be produced by the assessee-company. As rightly contended by the Id. Counsel for the assessee and agreed even by the Id. D.R., the very foundation of the impugned penalty imposed by the Id. CIT(Appeals) under section 271(1)(c) of the Act thus no more survives and the penalty so imposed by him is liable to be cancelled having no legs to stand. We may clarify that the Assessing Officer will be free to reinitiate the penalty proceeding depending on the outcome of set aside proceedings in accordance with law. We accordingly cancel the penalty imposed by the Id. CIT(Appeals) under section 271(1)(c) and allow this appeal of the assessee.

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

Order pronounced in the open Court on July 20, 2021.

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

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

Kolkata, the 20th day of July, 2021

- Copies to :*
- (1) United Teleservices Limited
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor, Kolkata-700069**
 - (2) Assistant Commissioner of Income Tax,
Circle-12(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069**
 - (3) Commissioner of Income Tax (Appeals)-4, Kolkata,**
 - (4) Commissioner of Income Tax ,**
 - (5) The Departmental Representative**
 - (6) Guard File**

By order
Senior Private Secretary/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.