

THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 4744/Mum/2017 (Assessment Year 2008-09)

DCIT-11(1)(1) Room No. 204 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Royal Star Jewellery Pvt. Ltd. Gem & Jewellery Complex-III, G-40 SEEPZ, Andheri-E Mumbai-400 096. PAN : AADCR2371P
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Michael Jerald
Date of Hearing	30.09.2021
Date of Pronouncement	04.10.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) wherein learned CIT(A) has deleted penalty under section 271(1)(c) of the I.T. Act amounting to Rs. 1,01,55,000/-.

2. Brief fact of the case lead to levy of penalty are as under :-

The brief facts of the case are that the assessee-company filed its return of income for A.Y. 2008-09 on 28.09.2008 declaring total loss of Rs. 93,16,475/-. The case was selected for scrutiny and the assessment order u/s 143(3) of the Act was passed on 21.09.2012 assessing the total income of the appellant at Rs.3,20,86,220/-. Penalty proceedings were also initiated for furnishing inaccurate particulars of income on the T.P. adjustment of Rs. 3,33,27,978/-, disallowance u/s 40a(ia) of Rs. 6,18,437/- and disallowance of depreciation of Rs. 74,56,280/-. The assessee requested to keep the penalty proceedings in abeyance as it was in the process of filing an appeal before ITAT. The Hon'ble ITAT,"K" Bench, Mumbai, has vide order bearing ITA No. 7065/Mum/2012 dated 17/07/2013, directed the A.O. to restrict the addition

of T.P. adjustment only to the international transaction. Consequent to the directions of the ITAT, the TPO (Addl. CIT-TP-II(3), Mumbai) has revised working of the Arm's Length Price adjustment to Rs. 2,17,98,947/- .Consequent to the Hon'ble ITAT order the assessee was show caused as to why penalty u/s 271(l)(c) should not be levied. After giving an opportunity of hearing to the assessee, an order u/s 271(l)(c) of the Act was passed by the A.O. on 28.03.2014 levying penalty of Rs. 1,01,55,000/-.

3. Upon assessee's appeal learned CIT(A) has deleted the penalty.

4. Against this order the Revenue is in appeal before us. We have heard learned Departmental Representative. None appeared on behalf of the assessee despite notice.

5. Upon careful consideration, we note that while deleting the penalty learned CIT(A) has also held that notice under section 271(1)(c) of the Act is invalid. In this regard he has reproduced the assessee's submission/ground. Copied head note of Hon'ble Supreme Court case law and thereafter held that "the ground is allowed." There is no discussion as to how the case law is applicable on the fact of this case. There is no whisper that even the notice has been examined by the learned CIT(A). Such a laconic, non-speaking order without application of mind is not legally sustainable. In similar manner learned CIT(A) has deleted other aspects of penalty. Hence, we set aside the issue to the file of learned CIT(A). Learned CIT(A) is directed to pass appropriate speaking order after proper application of mind. Needless to add assessee should be given proper opportunity of being heard.

6. In the result, Revenue's appeal is allowed for statistical purposes.
Pronounced in the open court on 4.10.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai