

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

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 993/MUM/2020  
Assessment Year: 2005-06**

Laxmikant M. Sharma,  
Solicitors Bungalow, Querry Road,  
Malad (E),  
Mumbai-400097.

**PAN No. ANRPS 4379 N**

**Appellant**

**Vs.** ITO-30(2)(2),  
Room No. 609, Kautilya Bhavan,  
G Block, BKC, Bandra (E),  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Aditya K. Sharma, AR  
Revenue by : Mr. Brajendra Kumar, DR

Date of Hearing : 25/08/2021  
Date of pronouncement : 26/10/2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-41, Mumbai [in short 'CIT(A)'] for the assessment year 2005-06 dated 14.03.2016 and arises out of assessment completed u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short the Act).

2. The brief facts of the case are, the assessment in this case was completed u/s 143(3) on 30.11.2012 and in the said assessment, the assessee claimed deduction u/s 80IB to the extent of ₹25,05,037/- and the same was disallowed by the Assessing Officer. On appeal, the disallowance was confirmed by the Ld. CIT(A) and aggrieved the assessee filed further appeal before the ITAT. Before

ITAT, the assessee filed some additional evidences and accordingly ITAT set aside the order of the Assessing Officer and restored the matter back to the Assessing Officer for fresh consideration vide order dated 21.10.2009 (ITA No. 6556/M/2008). The Assessing Officer vide order u/s 143(3) r.w.s. 254 dated 13.03.2010 accepted the claim of the assessee.

Subsequently, CIT(A)-24 observed after verifying the assessment records. The Assessing Officer in his order u/s 143(3) r.w.s. 254 had accepted the claim of the assessee without verifying various aspects and hence, the said order was found erroneous and prejudicial to the interest of the Revenue, therefore, Ld. CIT(A)-24 passed the order u/s 263 dated 15.07.2011 setting aside the said order and restored the matter to the file of the AO, with a direction to pass a fresh order after giving proper opportunity to the assessee. Consequently, the Assessing Officer initiated the subsequent proceedings by issued the statutory notices to the assessee and passed the order u/s 143(3) r.w.s. 263 on 30.11.2012, disallowed the deduction claimed by the assessee u/s 80IB of the Act. Accordingly, he initiated the penalty proceedings vide notice u/s 274 r.w.s. 271 of the Act dated 30.11.2012 for furnishing inaccurate particulars of income with reference to disallowance of the deduction claimed by the assessee u/s 80IB of the Act. The Assessing Officer levied the penalty, the minimum penalty leviable i.e. 100% of the tax sought to be evaded ₹8,21,115/-. After taking prior approval of Joint Commissioner of Income Tax, Mumbai Range-30(2).

3. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and CIT(A) dismissed the appeal filed by the assessee as the assessee did not produce any evidence during the course of appellate proceedings and neither attended the proceedings to pursue the appeal in spite of numerous opportunities.

4. At the time of hearing, it is brought to our notice that the quantum appeal filed by the assessee before the ITAT vide ITA No. 7418/M/2014 for the same assessment year and the ITAT set aside the order passed u/s 143(3) r.w.s. 263 of the Act with the observation that the ITAT has already set aside the revisionary order passed u/s 263 and the assessment order passed by the Assessing Officer stand cancelled when the order u/s 263 itself is quashed.

5. Considering the above facts on record, we observed that the quantum order passed by the Assessing Officer u/s 143(3) r.w.s. 263 is set aside and quashed. Therefore, the penalty levied based on the order u/s 143(3) r.w.s. 263 becomes infructuous. Accordingly, the appeal filed by the assessee hereby allowed.

5.1 Accordingly, we direct the Assessing Officer to cancel the penalty levied u/s 271(1)(c) of the Act.

6. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 26/10/2021.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUH RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/10/2021

Rahul Sharma, Sr. P.S.

**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//

BY ORDER,  
(Dy./Assistant Registrar)  
**ITAT, Mumbai**