

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2003/Mum/2020

(A.Y: 2004-05)

ITO – 12(3)(1) 1 <sup>st</sup> Floor, Room No. 145, Aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s. JAS Trading P. Ltd., 6D/603, Prem Nagar, SV Road, Borivali (W), Mumbai - 400092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ9837H		
Appellant	..	Respondent

Appellant by :	Ms.Jacinta. CIT. DR
Respondent by :	Shri. Rahul Makani. AR

Date of Hearing	29.09.2021
Date of Pronouncement	30.09.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-21 Mumbai, passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal.

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO without considering the merits of the issue and merely on the ground that the ITAT has deleted the quantum*

*addition.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO without appreciating the fact that the Department has not accepted the order of the Hon'ble ITAT deleting the quantum addition made and further appeal before the High Court u/s 260A is pending before Hon'ble High Court.*
3. *The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the AO be restored.*
4. *The appellant craves leave to add, amend or alter all or any of the grounds of appeal.*

2. The Brief facts of the case are that, the assessee company is engaged in the business of trading in iron and steel goods. The assessee has filed the return of income for the A.Y 2004-05 on 28.10.2004 declaring a total income of Rs. 3,25,586/- and the return of income was processed u/s 143(1) of the Act. The Assessment was completed with additions/disallowance of commission, unapproved credit balances and cessation of liability and the order passed was u/sec 143(3) r.w.s 147 of the Act on 23.12.2011.

3. Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act. The A.O. found that the assessee has failed to prove the genuineness

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of the transactions and the claims. The A.O. has provided opportunity to submit explanations. The A.O. was not satisfied with the reply of the assessee and relied on the findings in the scrutiny Assessment and levied the penalty and passed order u/s 271(1)(c) of the Act dated 26.03.2014.

4. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) has considered the grounds of appeal, findings of the A.O. and the submissions of the assessee and finds that the assessee's quantum appeal for said Assessment year was allowed by the Honble Tribunal and referred at page 4 Para 6 of the order. Further the CIT(A) relied on the Hon'ble Supreme court and the High Court decisions and observed that since the additions forming the basis of levy of penalty itself have been set aside by the Honble Tribunal, therefore the penalty imposed u/sec 271(1)(c) of the Act does not survive and allowed the assessee appeal. Aggrieved by the order of the CIT(A), the Revenue has filed an appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the penalty and relied on the AO order and prayed for allowing the revenue appeal.

6. Contra, the Ld. AR relied on the decision of the Hon'ble Tribunal in assessee own case in respect of quantum additions and has been deleted and prayed for dismissal of revenue appeal.

7. We heard the rival submissions and perused the material on record. Prima-facie, the sole crux of the disputed issue is with respect to penalty deleted by the CIT(A). We on perusal of the CIT(A) order find that the CIT(A) has relied on the Hon'ble Tribunal decision in assessee own case in quantum appeal in ITA No. 07/Mum/2013 dated 6-07-2018 and has observed at page 4 Para 6 which is read as under:

*"11. In the case before us, the learned D.R. made out a point that non- furnishing of actual reasons is only a venial breach in as much as the main reason for reopening, namely the statement of Shri Shailesh 'Shah, Director of the assessee, was indeed made known to the assessee in the communication dated 05.09.2011 m, which has been reproduced above. At the*

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time of hearing, the learned A.R. pointed out that the actual reasons recorded (placed in the Paper Book of the Revenue) referred to a letter dated 18.03.2011 received from the DCIT, Central Circle-45, Mumbai referring to the assessment proceedings in the case of one S/v-i Anil M. Gupta wherein it was found that the assessee has made bogus sales to the said concern. The learned A.R. pointed out that this averment was missing in the reasons communicated to the assessee through the communication dated 05.09.2011 (supra). Elaborating on this point, the learned A.R. submitted that if the assessee was made aware of such reasons, it would have explained to the AO that the bogus sales being referred to by the AO of Shri Anil M. Gupta have since been accepted as genuine by the order of the CIT(A) in that case dated 15.10.2010. In this context, he has referred to pages 89 to 125 of the Paper Book wherein the said order of the CIT(A) was placed wherein not only the bogus sales stated by the AO has been accepted as genuine but even the retraction of the Director Shri Shailesh Shah has been upheld. It was, therefore, contended that non-furnishing of the actual reasons prevented the assessee from making out an appropriate objection against the initiation of reassessment proceedings. The aforesaid matrix brought out by the learned A.R. clearly suggests that the AO has not accorded the sanctity which is otherwise mandated by law to the requirement of supplying of reasons for reopening to the assessee. Apart from non-adherence to the mandated requirement, in the present case, even on facts, it is absolutely clear that non-furnishing of the actual reasons recorded for initiating reassessment has quieted the principles of natural justice. As noted by our coordinate bench in the case of Tata International Ltd. (supra) the entitlement of the assessee to know the reasons on the basis of which the AO has formed belief about escapement of income, is a rule of natural justice. So far as the instant case is concerned, it is abundantly clear that one of the reasons recorded by the AO, being the assessment in the case of Shri Anil M. Gupta made by the DCIT, Central Circle-45, Mumbai wherein sales by the assessee concerned of Rs.5 lakhs has

*been taken as bogus, was not subsisting on the date of recording of the reasons, such an assessment had already been negated by the CIT(A) vide his order dated 15.10.2010 in the case of Shri Anil M. Gupta. The reasons were indeed recorded by the AO on 25.03.2011, i.e. posterior to the order of the CIT(A). This certainly caused a prejudice to the assessee at the stage of raising objections to the reasons recorded for initiating the reassessment proceedings.*

*12. Thus, on the aforesaid aspect itself, we hold that the reassessment order is bad in law and is required to be quashed. We hold so.*

*13. Before parting, we may say that the other pleas raised by the assessee on the issue of validity of reopening of assessment are not being gone into as the same are rendered academic in nature. Since we have already quashed the reassessment, the other grounds raised by the assessee on the merits of additions therein are also rendered academic and are not being adjudicated. Therefore, we allow the appeal of the assessee in the context of ground No. 1(1).*

*14. In the result, the appeal filed by the assessee is allowed as above.”*

8. The Ld.DR fairly accepted the Honble tribunal order. Since the quantum appeal is allowed by the Hon'ble Tribunal therefore the penalty will not sustained. We are of the opinion that the CIT(A) dealt on the facts and has relied on the decision of Hon'ble Tribunal and passed a

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reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 30.09.2021.

Sd/-

(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 30.09.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

( Asst. Registrar)

ITAT, Mumba