

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 19/SRT/2020 (AY 2013-14)
(Hearing in **Physical** Court)

Income Tax Officer, Ward-1, 2 nd Floor, BSNL Building, Opp. Jalaram Mandir, Station Road, Bardoli-394 601	Vs	Shree Chalthan Vibhag Khand Udhyog Mandli Ltd., At & Post: Chalthan, Tal. Palsana, Dist. Surat-394305 PAN : AAAAC0477A
Appellant / Revenue		Respondent / assessee

Assessee by	Shri Akshay Modi, CA
Revenue by	ShriH.P.Meena, CIT-DR
Date of hearing	09.12.2021
Date of pronouncement	09.12.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-1, Surat dated 27.11.2019 for assessment year (AY) 2013-14, which in turn arises from order of penalty levied by assessing officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' dated 30.03.2018. The Revenue has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the penalty of Rs.32,80,19,926/- levied u/s 271(1)(c) of the Act by the AO.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s 271(1)(c) of the Act though the addition on the basis of which penalty proceedings were

initiated in the assessment u/s 143(3) of the I.T Act has been confirmed by the Ld. CIT(A).

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied u/s 271(1)(c) of the Act on the basis of the decision of Hon'ble ITAT, Surat against the order u/s 143(3) of the IT Act in this instant case and failing to appreciate the facts of this case being different from the case CIT vs. Tasgaon Taluka SSK Ltd., where the Hon'ble Supreme Court has set aside the order and remitted back to the file of AO.”

2. Brief facts of the case are that assessee is a co-operative society engaged in the business of manufacturing of sugar and sale of sugar & buy products generated while producing sugar. The Assessing Officer while passing the assessment order for assessment year 2013-14 made addition of Rs.106.15.63.160/- on account of alleged inflated purchases. The Assessing Officer made addition in the assessment after detail discussions. On appeal in quantum assessment, before Ld. CIT(A) the addition of said purchases was upheld. The Assessing Officer after receipt of order of Ld. CIT(A) in quantum assessment, levied penalty under section 271(1)(c) of the Act @ 100% of tax sought to be evaded. The Assessing Officer worked out the penalty of Rs.32.80 crores in his order dated 30.03.2018. On further appeal before Tribunal the penalty was deleted by Ld. CIT(A) by taking view that addition in the assessment has been set aside by Tribunal and matter be restored to the file of Assessing Officer. Therefore, penalty order would not survive and thereby deleted entire penalty. However, the Assessing Officer

was given liberty to initiate the proceedings in accordance with law after passing the order in the quantum assessment, in pursuance to order of co-ordinate Bench of this Tribunal. Further aggrieved, the Revenue has filed present appeal before this Tribunal.

3. We have heard the submission of Ld. Commissioner of Income tax- Departmental Representative (CIT-DR) for the Revenue and the Ld. Authorized Representative (AR) for the assessee. At the outset of hearing, Ld. AR of the assessee submits that addition on the basis of which the penalty was levied has been set aside / restored back to the file of Assessing Officer by Tribunal in ITA No.1205/AHD/2017 dated 19.07.2019. Therefore, the penalty order will not survive. The Ld. AR of the assessee also placed on record the copy of Tribunal dated 19.07.2019.
4. On the other hand, Ld. CIT-DR for the Revenue accepted that the addition in the quantum assessment on the basis of which the penalty was levied is restored to the file of Assessing Officer. Therefore, the issues raised in the present appeal may be restored back to the file of Assessing Officer to initiate the action afresh in accordance with law.
5. We have considered the rival submission of both the parties and have gone through the order of authorities below including the order of our predecessor in quantum assessment in ITA No.1205/AHD/2017 (supra). We find that the

addition on the basis of which the Assessing Officer levied the penalty under section 271(1)(c) had been restored back to the file of Assessing Officer. Therefore, the order of penalty would not survive. Thus, we affirm the order of Ld. CIT(A), however, the Assessing Officer is given liberty to initiate the penalty after passing order in quantum assessment in pursuance of our predecessor's order (supra) in accordance with law. Needless to direct that before passing the order afresh the assessing officer shall grant opportunity of hearing to the assessee.

6. In the result, the appeal of the Revenue is dismissed.

Order announced at the time of hearing of appeal on 9th December, 2021 in the Physical Court hearing.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 09/12/2021
Dkp. Out Sourcing P.S

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

- Copy to:
1. Appellant-
 2. Respondent-
 3. CIT(A)-
 4. CIT
 5. DR
 6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat