

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 18/SRT/2020 (AY 2012-13)  
(Hearing in **Physical** Court)

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| Income Tax Officer, Ward-1,<br>2 <sup>nd</sup> Floor, BSNL Building,<br>Opp. Jalaram Mandir, Station<br>Road,<br>Bardoli-394 601 | Vs | Shree Khedut Sahakari<br>Khand Udhyog Mandli<br>Ltd., At & Post: Baben,<br>Tal. Bardoli,<br>Dist. Surat-394601<br><b>PAN : AAAAS 4554 N</b> |
| 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 26.11.2016 for assessment year (AY) 2012-13, which in turn arises from the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' dated 23.03.2018. 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.74,81,63,963/- levied u/s 271(1)(c) of the Act by the AO. Rs.74,81,63,963/-.*

*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 & its buy products. The Assessing Officer while passing the assessment order for assessment year 2012-13 made addition of Rs.224.44 crores on account of alleged inflated purchases. On appeal 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% that sought to be evaded. The Assessing Officer worked out the penalty of Rs.74.81 crores.
3. 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 is restored to the file of Assessing Officer. Therefore, penalty would not survive and deleted the 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.

4. We have considered 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. Therefore, the penalty order will not survive. The Ld. AR of the assessee also placed on record the copy of Tribunal in assessee's own case in ITA No.1206/AHD/2017 dated 19.07.2019 reported in vide [2019] 108 taxman.com 258 (Surat-Trib.).
5. 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 matter this may be restored back to the file of Assessing Officer to initiate the action afresh after passing the order 17.09.2019 in pursuance of the order of Tribunal.
6. 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 assessee's case in ITA No.1206/AHD/2017 (supra). We find that the addition in the quantum assessment 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 under section 271(1)(c), 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.

7. In the result, the appeal of the Revenue is dismissed as indicated above.

Order announced at the time of hearing of appeal on 9<sup>th</sup> 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