

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

**BEFORE MS. SUCHITRA RAGHUNATH KAMBLE (JUDICIAL MEMBER) AND
SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)**

**ITA No. 7127/MUM/2019
(Assessment Year: 2013-14)**

Cigna Health Solutions India
Private Limited,
Cabin No. 7.2, 7th Floor,
Boston House, Suren Road,
Chakala, Andheri East,
Mumbai – 400 093

Vs. Assistant Commissioner of
Income Tax -12(1)(2)
Room No. 223, 2nd Floor Aayakar
Bhavan, M.K. Road, Churchgate,
Mumbai – 400 020

PAN No. AAEECC3118J

(Assessee)

(Revenue)

Assessee by : Shri Hemen Chandariya, A.R
Revenue by : Shri Ashish Kumar, D.R

Date of Hearing : 16/12/2021
Date of pronouncement : 16/12/2021

ORDER

PER SUCHITRA RAGHUNATH KAMBLE, J.M:

This appeal is filed by the assessee against the order dated 31.12.2018 passed by CIT(A)-20, Mumbai, for assessment year 2013-14. The assessee has raised before us the following grounds:

“Based on the facts and circumstances of the case, Cigna Health Solutions India Private Limited (hereinafter referred to as 'the Appellant') craves leave to prefer an appeal under section 253 of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') against the order dated 28 June 2019 issued under section 271(l)(c) of the Act (hereinafter referred to as the 'Order') by the Commissioner of Income-tax (Appeals) - 20, Mumbai [hereinafter referred to as the 'learned CIT(A)'] on the following grounds, each of which are without prejudice to one another:

On the facts and circumstances of the case and in law, the learned CIT(A) has:

1. Erred in levying penalty of Rs.78,53,071/- on the enhancements made of Rs.2,54,14,470/- to the total income on the ground of concealment of particulars of income.
2. Without prejudice to the above, the learned CIT(A) has erred in levying penalty without appreciating the following facts:
 - a. that the enhancements were made without providing an opportunity of being heard thereby violating the principles of natural justice.
 - b. that the enhancement of Rs.54,65,476 was made by restricting the allowable expenditure to the extent of revenue from operations of Rs. 22,08,686 without any cogent reasons.

Further, the details of expenditure debited to the profit and loss account of Rs.76,74,162 were provided during the course of assessment proceedings to the assessing officer and were also subjected to statutory audit.

The learned CIT(A) has also erroneously stated the amount of revenue from operations as Rs. 22,08,686 instead of Rs. 24,08,686.
 - c. that the enhancement of Rs. 1,99,30,449 made on account of alleged inconsistency in the financial statement, was merely on account of restatement/ reclassification with no impact on profit and loss account.
 - d. that the enhancement of Rs.18,545 was made on the basis of the tax audit report submitted during the course of appellate proceeding.
3. Erred in levying penalty without appreciating the fact that a rectification application under section 154 of the Act dated 23 may 2019 is filed against the CIT(A) order dated 31 December 2018 and which is pending to be processed. The rectification application on being processed would result in the aforesaid enhancement being deleted and therefore, question of penalty should not arise.
4. Violated the principles of natural justice by not giving an opportunity of being heard before passing an order under section 271(1)(c) of the Act.

The appellant craves leave to add, alter, vary omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Honourable Income-tax Appellate Tribunal to decide this appeal according to law.”

2. The assessee was engaged in the business of providing market research related services in the health insurance sector and developing healthcare services delivery system. In the profit and loss account, assessee had shown the revenue from operations at Rs.24,08,686/- and other income at Rs.18,95,120/-. The assessee filed return of income on 29.11.2013 declaring a total loss of Rs.21,24,600/-. Thereafter the assessee filed a revised return on 31.03.2015 declaring total loss of Rs.2,96,956/-. Assessment order was passed on

28.03.2016 thereby determining the total income of the assessee at Rs.3,66,00,060/-. Aggrieved by the assessment order the assessee filed the appeal before the CIT(A) and CIT(A) deleted the addition made by the assessing officer. However, the CIT(A) made enhancement of Rs.2,54,14,417/- and initiated penalty proceedings u/s 271(1)(c) of the Act. Since, the CIT(A) was satisfied that the assessee concealed the income the CIT(A) vide order dated 28.06.2019 passed penalty order thereby imposing penalty of Rs.78,53,071/-.

3. Being aggrieved by the penalty order passed by the CIT(A), the assessee is before us.

4. Ld. A.R submitted that the CIT(A) levied penalty on the enhancement made to the total income in the order issued u/s 250 of the Income Tax Act, dated 31.12.2018 for A.Y. 2013-14. In the quantum appeal, the assessee preferred the appeal against the order of the CIT(A) and the Tribunal vide order dated 25.11.2020 set-aside the order of the CIT(A) on enhancement and remanded the matter, back to the file of the CIT(A) for fresh adjudication. (ITA No. 1117/Mum/2019 and ITA No. 1650/Mum/2019). Therefore, the Id. A.R submitted that as the quantum appeal which was the basis for levying penalty u/s 271(1)(c) of the Act has been set-aside by the Tribunal for fresh adjudication, the order levying penalty needs to be quashed.

5. The Id. D.R relied upon the assessment order and the penalty order passed by the CIT(A) as well as the order of the CIT(A) whereby enhancement of the assessment is directed by the CIT(A).

6. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that for assessment year 2013-14 the quantum appeal being ITA No. 1117/Mum/2019 has already been restored back to the file of the CIT(A) for making the fresh adjudication. It will be appropriate to restore this matter to the file of the CIT(A) for taking proper cognizance in

consonance with the quantum appeal. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. The appeal of the assessee is partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 16.12.2021

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Suchitra Raghunath Kamble)
Judicial Member

Place: Mumbai

Date 16.12.2021

PS. Rohit

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.