

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F": NEW DELHI ]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
A N D  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA. No. 205/Del/2019  
(Assessment Year: 2013-14)

Pneumax Pneumaxtic India Pvt. Ltd., D-82, Hosiery Complex, Phase - II Extension, Noida, [Uttar Pradesh ] - 201 305 <b>PAN: AADCP4421G</b>	Vs.	DCIT,  Circle : 2,  Noida.
(Appellant)		(Respondent)

Assessee by :	Ms. Shashi M. Kapila, Adv.; Shri R. R. Maurya, Adv.; & ShriParvesh Sharma, Adv.
Department by:	Ms. NidhiSirivastava, [CIT] - D.R.;
Date of Hearing :	27/12/2021
Date of pronouncement :	29/12/2021

**ORDER**

**PER N. K. CHOUDHRY, J. M.**

**1.** This appeal has been preferred by the Assessee against the order dated 27.09.2018 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-1, New Delhi, (in short 'Ld. Commissioner') u/s 250 (6) of the Income Tax Act 1961 (in short 'the ACT') for assessment year 2013-14.

**2.** In this case the return of income for declaring a loss of Rs.26,34,469/- was filed by the Assessee on dated 30<sup>th</sup> November, 2013. Thereafter the case of the Assessee was selected for scrutiny and assessment was framed on dated 30<sup>th</sup> March, 2016 while assessing the income of the Assessee at Rs.13,04,030/- as against the returned loss of Rs.26,34,469/- by disallowing the foreign exchange loss and office maintenance expenses to the tune of Rs.33,93,027/- and Rs.5,45,475/- respectively.

Against the said disallowances, the Assessee preferred first appeal before the Id. Commissioner, who vide impugned order though deleted the disallowances under challenge, however, enhanced income of the Assessee by disallowing trade liabilities of Rs.10,77,29,743/- and making addition of Rs.4,51,21,897/- qua un-accounted / un-explained cash balance. The Id. Commissioner also initiated the penalty proceedings. The Id. Commissioner later on vide impugned order imposed the penalty @ 100% of tax allegedly sought to be evaded by the Assessee on the income of Rs.15,02,17,171/- determined by the Id. Commissioner vide its order dated 28<sup>th</sup> March, 2018 in quantum appeal. Against the impugned order, the Assessee is in appeal before us.

**3.** The Assessee has claimed that the addition against which the penalty has been levied has already been set aside by the co-ordinate bench of the Tribunal vide its order dated 26<sup>th</sup> November, 2019 in ITA. No. 4203/Del/2018 and, therefore, the penalty cannot survive. For ready reference, the relevant part of the order dated 26.11.2019 (supra) is reproduced herein below:-

*“9.1 The Assessee in its written submissions has raised the issue that opening balance of trade receivables has not been taken into account by the*

CIT(A) and also no adjustment has been made for other non-cash expenditure like depreciation, forex loss booked, etc. The learned CIT(DR) has submitted that issue needs verification at the end of lower authorities. We are in agreement with the learned DR because this is a matter of factual verification on the basis of financial statement of earlier year as well as financial statement of the year under consideration. **Accordingly, we set aside the finding of the learned CIT(A) on the issue of addition of 4,51.21,897/- and restore the matter back to the file of the Ld. CIT(A) for deciding afresh** after providing adequate opportunity of being heard to both the assessee as well as to the Assessing Officer. The Ground No. 1 (iv) of the appeal is accordingly allowed for statistical purposes.

- 10.** As far as the issue of addition for 50% out of trade payables is considered, the Ld. CIT(A) observed as under :

“19. Admittedly, the appellant has booked huge amount of liabilities from its sister concern, M/s PriemaxSpA Italy. The appellant has brought nothing on record to justify the incurring of such huge liabilities to its sister concern. The proof of the goods actually having been purchased by the appellant from its sister concern in Italy were not placed on record. No documentary evidence that the said goods which were shown to have been traded by the appellant from its sister concern had actually reached this country from Italy were furnished. No details of custom duty, etc., paid, were furnished either. The appellant also not brought any material on record that the liabilities were incurred from its sister

concern in the exigencies of its business. Some vague arguments were advanced like tough, competition by the Chinese concern. These arguments are too general in nature to **support the case of the appellant.** ”

**10.1** The Ld. counsel of the Assessee submitted that no addition could be made in the year under consideration in respect of opening trade payables in absence of liability waived, off by the Assessee in terms of section 41(1) of the Act In our opinion, this is settled principle and no addition can be made in respect of the trading liability of the earlier years except under section 41(1) of the Act. As far as the liability of the current year is concerned, the learned CIT(A) has observed that no documentary evidence in support of purchases from the sister concern were filed before him. Before us, the learned counsel has filed sample copy of evidence in support of import of goods from the sister concern. In our opinion, mere sample copy of documentary evidence for one transaction of import, is not sufficient to decide the issue in dispute whether the purchases in reference are bogus as held by the learned CIT(A) and the Assessee should produce documentary evidence in support of all the purchases made during the year under consideration. We are of the considered opinion that this issue needs verification by the lower authorities. **Accordingly, we set aside the finding of the learned CIT(A) on the issue in dispute and restore the matter back to the file of the learned CIT(A) for deciding afresh** in accordance with law, after affording adequate

*opportunity of being heard to both the Assessee as well as the Assessing Officer. The grounds of appeal are accordingly allowed for statistical purposes. “*

**3.1** The Id. AR in support of the above submissions also focused and relied upon following judgments;

- (i) Amrut Tubewell Co. Vs. ACIT (2015)  
61 taxmann.com 346 (Guj.);
- (ii) Asia Investments (P.) Ltd. Vs. ACIT (2018)  
91 TAXMANN.COM 431 (Mumbai Trib.); &
- (iii) Income Tax Officer Vs. Mahipal Textiles Mills  
(2004) 4 SOT 758 (Jodh.) (SMC).

**4.** The Ld. D R though supported the impugned order, however did not refute the factual position as contended by the Ld. AR.

**5.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and find that as the additions on the basis of which penalty has been levied, have already been set aside and issues related to the additions remanded to the file of Ld. CIT(A) for decision afresh, by the Co-ordinate Bench of the Tribunal in Assessee's own quantum Appeal i.e. 4203/DEL/2018 decided on 26-11-2019, the penalty under challenge imposed by impugned order, does not survive, consequently impugned order is set aside and the Assessee's appeal is allowed.

We may clarify that the Ld. Commissioner would be at liberty to initiate the penalty proceedings afresh in accordance with law, if any to be needed as per facts and circumstances of the case.

6. In the result, the appeal of the Assessee stands allowed.

Order pronounced in the open court on : **29/12/2021.**

**Sd/-  
( ANIL CHATURVEDI )  
ACCOUNTANT MEMBER**

**Sd/-  
( N. K. CHOUDHRY )  
JUDICIAL MEMBER**

Dated : 29/12/2021.

\*MEHTA\*

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	27.12.2021
Date on which the typed draft is placed before the dictating member	27.12.2021
Date on which the typed draft is placed before the other member	29.12.2021

Date on which the approved draft comes to the Sr. PS/ PS	29.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	29.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	29.12.2021
Date on which the final order is uploaded on the website of ITAT	29.12.2021
date on which the file goes to the Bench Clerk	29.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	