

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.97/SRT/2020

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Virtual Court Hearing)

Income Tax Officer Ward-2(1)(4) Surat, Room No. 219, 2 nd Floor, Aaykar Bhavan, Majura Gate, Surat-395002	Vs.	Tirupati Energy Solutions Pvt. Ltd., M-36, Corner Point, City Light Road, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCT 7044 G		
(Appellant)		(Respondent)

Assessee by : Shri Sapnesh R Sheth, C.A

Respondent by : Shri H.P.Meena– CIT-DR

सुनवाईकीतारीख/ Date of Hearing : 18/01/2022

घोषणाकीतारीख/Date of Pronouncement: 27/01/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to assessment year 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-2, Surat [‘CIT(A)’ for short], dated 14.02.2020, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’), dated 31.03.2015.

2. At the outset, Shri Sapnesh R Sheth, Ld. Authorized Representative (AR) for the assessee begins by pointing out that in assessee’s case, ITAT Surat Bench vide its order dated 16.10.2018 passed in ITA No.573/Ahd/2017 has deleted the quantum addition of Rs.4,07,25,000/- u/s 68 of the Act. Since the quantum addition has been deleted by this Tribunal, therefore penalty levied on the assessee based on the said quantum addition should be deleted.

3. On the other hand, Ld. CIT-DR for the Revenue relied on the order of Assessing Officer.

4. We have heard both the parties and perused the materials available on record. We note that Ld. CIT(A) has deleted the penalty observing as follows:-

*“After considering the findings of the assessing officer and submissions of the appellant, I find that the appellant has challenged the levy of penalty of Rs.1,32,13,226/- pertaining to addition of Rs.4,07,25,000/- made u/s 68 of the IT Act. In the penalty order, the AO noted that the said addition upheld by the CIT(A) clearly leads to the conclusion that income to this extent was concealed by the appellant as per Expl., 1 to Section 271(1)(c) of the Act. On the other hand, the AR of the appellant has submitted a copy of ITAT, Surat order in ITA No.573/Ahd/2017 dtd. 16.10.2018, of the appellant’s quantum appeal wherein the Hon’ble Bench deleted the additions of Rs.4,07,25,000/- u/s 68 of the Act. Considering this fact that the quantum addition was deleted, do not find any reason to sustain penalty levied u/s 271(1)(c) of Rs.1,32,13,226/- is hereby **deleted**. Ground Nos. 1 to 3 of the appeal are hereby allowed.”*

5. When the foundation is removed then superstructure automatic falls. Since the quantum addition has been deleted by Tribunal, therefore, the penalty which is related to the quantum should also be deleted. Hence, we do not find any infirmity in the order passed by Ld. CIT(A). That being so, we decline to interfere with the order passed by Ld. CIT(A), his order on this issue is hereby accepted and therefore, we dismiss the appeal filed by the Revenue.

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

Order is pronounced on 27/01/2022 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 27/01/2022

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat