

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 695/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT, CC-7(3) Room No.655, Aaykar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. National Standard India Ltd. 412, Vardhan Chambers, Cawasji Patel Street, Fort, Mumbai-400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN9808L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri C. T. Mathews (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 07/12/2021

घोषणा की तारीख /Date of Pronouncement: 18/02/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 17.02.2021 passed by the Commissioner of Income Tax (Appeals) -49, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

“1. On the facts and in the circumstances of the case, the Learned CIT(A) has erred in deleting the penalty of Rs.52,76,962/- u/s 271(1)(c) merely relying on the decision on Hon’ble ITAT that quantum addition was deleted without discussing merit of the case



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and ignoring the facts that the appeal on the quantum addition is pending before Hon'ble Bombay High Court.

2. The appellant craves leave to amend or alter any ground/or add new grounds which may be necessary."

3. The brief facts of the case are that the assessment u/s 153A r.w. Section 153C/143(3) & 148 of the I. T. Act, 1961 was completed on 31.03.2013 determining total income to the tune of Rs.1,18,85,129/- as against the return loss of Rs.6,85,53,400/-. Subsequently, the assessee filed the revised return of income showing loss to the tune of Rs.7,93,86,493/-. The penalty proceeding u/s 271(1)(c) was initiated as the assessee did not declare the income of Rs.1,10,25,000/- which was offered as undisclosed income at the time of the search action. The said amount was earned by the assessee from the sale of car parking and was not reflected in its books of account. Notice u/s 271(1)(c) was given and after the reply of the assessee, the AO levied the penalty to the tune of Rs.52,76,962/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully filed. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

"6.0 All the grounds are against the penalty levied of Rs. 52,76,962/- u/s. 271(1)(c) of the Act. Since the grounds are inter-related, the same are considered simultaneously.

6.1. In this case assessment u/s. 153A r.w.s. 153C/143(3) & 148 was completed for AY 2011-12 on 31.03.2013. The total income was



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assessed at Rs. 1,18,85,129/-. The assessee filed the appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee. Subsequently, notice u/s. 271(1)(c) was issued and penalty u/s. 271(1)(c) was levied in respect of income of Rs.1,10,25,000/- which has been offered as undisclosed income at the time of the search action and which has been earned by the assessee from the sale of car parking and was not reflected in the books of account.

6.2. In response to the notice of hearing, the assessee uploaded written submission dated 09.02.2021. It was submitted by the assessee that it has filed an appeal before the Hon'ble ITAT against the order of Ld. CIT(A) and the Hon'ble ITAT vide its order dated 08.01.2020 has quashed the assessment order on legal as well as jurisdictional issue. The assessee submitted that since the additions in respect of which the impugned penalty was levied did not survive, the penalty may also be deleted.

6.3. A copy of the order of the Hon'ble ITAT dated 08.01.2020 was also uploaded. On perusal of the said order, it is found that the Hon'ble ITAT has held that in the facts of the present case, "it is established on record, prior to issuance of notice under section 148 of the Act, no reasons were recorded for re-opening of assessment. That being the case, the issuance of notice under section 148 of the Act is not only without jurisdiction but the impugned assessment order passed consequent thereupon is also without jurisdiction, hence, void ab initio. Accordingly, we have no hesitation in quashing the impugned assessment order passed u/s. 153A r/w section 153C/143(3) and under section 148 of the Act". The Hon'ble ITAT has further held that since the assessment order has been quashed on legal and jurisdictional issue, the grounds raised on merits have



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become redundant, hence there is no need to adjudicate them for the present.

6.4. Since the quantum additions for the said assessment year did not survive as a result of the said order of the Hon'ble ITAT, there remains no addition on which the impugned penalty has been levied and consequently the penalty car. Builder be upheld on its own, as held by the Hon'ble Apex Court in the case of KC. Builders Vs. ACIT, 135 taxman 461(SC). Accordingly, the penalty levied by deleted. Ground of appeal no. 1 is accordingly allowed.”

5. On appraisal of the above mentioned finding, we noticed that the assessment has been quashed by the Hon'ble ITAT vide order dated 08.01.2020 meaning thereby the quantum has been deleted. No penalty is leviable when the quantum has been deleted. At the time of arguments, the Ld. Representative of the Department has filed the copy of order passed by jurisdictional High Court in the case of **CIT Vs. Vinodkumar Maheshwari (2007) 292 ITR 160 (Bom)**. On appraisal of the said order, we noticed that the quantum has been allowed by Hon'ble High Court, therefore, the Hon'ble High Court allowed the reference applicable u/s 256(2) of the Act, however, final order has yet to come. Anyhow, the facts of this case is quite distinguishable. In the instant case, the quantum has not been allowed yet, therefore, the finding of the case **Vinodkumar Maheshwari (supra)** is not applicable to the present case. Accordingly, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage. We affirm the finding of the CIT(A) in question and decide this issue in favour of the assessee against the revenue.



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6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 18/02/2022

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष / VICE PRESIDENT

मुंबई Mumbai; दिनांक Dated : 18/02/2022

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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