

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,
AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1044/MUM/2021
(ASSESSMENT YEAR: 2009-10)

ACIT -1(3)(1), Mumbai
Room No. 540, 5th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

..... Appellant

M/s Tilaknagar Industries Limited,
3rd Floor, Indl. Assurance Bldg.
J.D. Tata Marg, Churchgate,
Mumbai - 400020
[PAN: AAAC6047R]

Vs

..... Respondent

Appearances

For the Appellant/Department : Shri B.K. Bagchi
For the Respondent/ Assessee : Shri Rayan Saldanha

Date of conclusion of hearing : 31.01.2022
Date of pronouncement of order : 31.03.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. This is an appeal filed by the Revenue against the order dated 04.01.2021 passed by the Commissioner of Income Tax (Appeals)-47, Mumbai (hereinafter referred to as ['CIT(A)'] in appeal [CIT(A)-47/10025/17-18] deleting the penalty levied by the Assessing Officer (AO) under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. Revenue has raised the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) without going into the merits of the case has directed the AO to delete the penalty levied u/s 271(1)(c) of the I.T. Act on the ground that the Hon’ble ITAT has held that the relevant proceedings to be void ab initio without appreciating the fact that the Hon’ble ITAT’s order being perverse hasn’t reached finality.?”*
3. The Departmental Representative appearing before us submitted that the issue has not attained finality in the quantum proceedings, and therefore, the CIT(A) erred in deleting the penalty by relying upon the order, dated 28.08.2020, passed by the Tribunal in the quantum appeal [ITA No. 6357/Mum/2017] without examining the merits of the matter. Per Contra, the Ld. Authorised Representative for the Assessee submitted that since the Tribunal has allowed the appeal of the Assessee by holding that the re-assessment proceedings initiated under Section 147/148 of the Act are void void-ab-initio, levy of penalty cannot be sustained.
4. We have considered the rival submission and perused the copy of the aforesaid order, dated 28.08.2020, placed on record. The Tribunal has allowed the quantum appeal filed by the Assessee pertaining to A.Y. 2009-10 and the addition of INR 2,11,47,228/- made by the Assessing Officer stands deleted. Taking note of this, the CIT(A) has deleted the levy of penalty under Section 271(1)(c) of the Act. The relevant extract of the order of CIT(A) is as under:

“7.1 I have considered the arguments of the assessee. The Hon’ble ITAT vide its order dated 28.08.2020 has set aside the order passed by the Ld. CIT(A), by holding that the notice u/s 148 r.w.s. 147 of the Act and subsequent proceedings were void ab initio and therefore they allowed appeal of the assessee for the A.Y. 2009-10. For clarity the

relevant observations of the Hon'ble ITAT are reproduced as under:-

"1.1 From the facts and circumstances of the case, discussed above, it can be safely concluded that the AO has passed the original assessment order after taking into consideration each and every details furnished by the assessee in response to the notice issued or query raised by him during the course of assessment proceedings. It can further be concluded that the AO had no tangible material for forming the belief that the income of the assessee has escaped assessment. Hence, in our opinion, since the AO has initiated the re-assessment proceedings on the material already placed on record by the assessee during the assessment proceedings, the action of the AO amounts to change of opinion which is not permissible under law. In the case of CIT v Kelvinator of India Ltd. (supra), the Hon'ble Supreme Court has held that post 01.04.1989 power of AO to reopen u/s 1417 is much wider, however, the AO has not jurisdiction to reopen assessment on the basis of mere change of opinion. Power u/s 147 of the Act can be exercised by the AO provided there is tangible material to come to conclusion that there is escapement of income from assessment. In our considered view, the AO has no tangible material to come to conclusion that income of the assessee had escaped assessment. Similarly, in the case of State Bank of India v ACIT (supra), the Hon'ble Bombay High Court had granted interim stay to the appellant holding that no notice u/s 148 read with Section 147 can be issued which is based on change of opinion. Hence, respectfully following the ratio laid down by

the Hon'ble Supreme Court and the Hon'ble High Court, we hold that since the AO had initiated reassessment proceedings in the present case based on change of opinion, the CIT(A) has wrongly upheld the action of the AO. We therefore allow the legal ground raised by the assessee and set aside the order passed by the Ld. CIT(A) holding that the notice u/s 148 read with section 147 of the Act and the subsequent proceedings as void ab initio..... In the result the appeal filed by the assessee for AY 09-10 is allowed.

7.2 Since the assessment order, on the basis of which impugned penalty has been levied is set aside by the Hon'ble ITAT and the relevant proceedings have been held to be void ab initio, the penalty order dated 19.03.2019 becomes unsustainable in law and does not survive. Therefore the penalty levied by the AO is directed to be deleted."

5. The re-assessment proceedings under Section 147/148 of the Act have been held to be void-ab-initio and the additions made in quantum proceedings stand deleted. Penalty order has no legs to stand. We do not find any infirmity in the order, dated 04.01.2021, passed by the CIT(A) deleting penalty levied under Section 271(1)(c) of the Act.
6. In the result, appeal is of the Revenue is dismissed.

Order pronounced on 31.03.2022.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31/03/2022
Alindra, PS

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