

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA Nos. 9521 & 9522/Del/2019  
(Assessment Years : 2000-01 & 2001-02)

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| Phenil Sugars Ltd.<br>207, Essel House, 10 Asaf<br>Ali Road, Delhi – 110 002<br><br><b>PAN No. AADCP 0153 H</b><br><b>(APPELLANT)</b> | Vs. | ACIT<br>Circle – 19(2)<br>New Delhi<br><br><b>(RESPONDENT)</b> |
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| Assessee by | Shri KVSR Krishna, C.A.     |
| Revenue by  | Shri Toufel Tahir, Sr. D.R. |

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| Date of hearing:       | 16.06.2022 |
| Date of Pronouncement: | 28.06.2022 |

**ORDER**

**PER ANIL CHATURVEDI, AM :**

Both the appeals filed by the assessee are directed against the order dated 26.09.2019 of the Commissioner of Income Tax (Appeals) – 2, New Delhi relating to Assessment Years 2000-01 & 2001-02.

2. At the outset, Learned AR submitted that the issue involved in both the appeals are identical except for the year and amounts involved and therefore the submissions made by him for one year would be applicable to the other year also. Learned DR did not controvert the aforesaid submissions of Learned AR. In view of

the aforesaid submissions of the AR, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2000-01.

3. Brief facts of the case as culled out from the material on record are as under:-

4. Assessee is a company which is stated to be engaged in the business of manufacturing of sugar. Assessee filed its return of income for A.Y. 2000-01 on 30.11.2000 declaring Nil income after adjusting brought forward losses of Rs.12,52,161/-. The assessment was initially framed u/s 143(3) r.w.s 147 of the Act and the total income was determined at Rs.42,47,340/-. AO has noted that subsequently, information was received from their bankers that assessee was showing less stock in the books as compared to the stocks pledged with Central Bank of India with whom it was having cash credit facility limit and thus there was understatement of stock between the quantity of stock pledged and the stock as shown in the books of accounts of the assessee. Accordingly, a notice u/s 148 of the Act dated 07.02.2007 was issued and served on the assessee. Thereafter, assessment was framed u/s 143(3) r.w.s 147 of the Act vide order dated 04.12.2007 and the total taxable income was determined at Rs.53,44,159/- by *inter alia* making addition of Rs.10,96,819/- on account of undervaluation of stock.

5. On the aforesaid addition on account of undervaluation of stock, AO vide penalty order passed u/s 271(1)(c) of the Act dated 27.03.2012 levied penalty of Rs.4,22,275/- u/s 271(1)(c) of the Act.

6. Aggrieved by the penalty order of AO, assessee carried the matter before CIT(A) who vide order dated 26.09.2019 in Appeal No.15/12-13 dismissed the appeal of the assessee.

7. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

*1. "The Ld. CIT(A) has erred in law and on facts in confirming the penalty of Rs. 4,55,275/- u/s 271(1)(c) without appreciating the fact that the quantum order of CIT(A) has been set aside by the ITAT, hence, as on date no addition on quantum exits against the assessee. Consequently there is no cause of action for levying any penalty. The penalty confirmed by CIT(A) deserves to be deleted.*

*2. Without prejudice, the appellant contends that assumption of jurisdiction u/s 271(1)(c) is wrong and bad in law. There is no specific charge against which the penalty is levied. The penalty levied is hence wrong and bad in law and deserves to be deleted.*

*3. The appellant contends that there is no material brought on record by the CIT(A) as well as A.O. for levying penalty u/s 271 (1)(c) except relying on the disallowance made in the quantum proceedings. Therefore also the penalty should be deleted.*

*4. The above grounds are independent and without prejudice to one and other. The appellant may be allowed to add, amend and forgo any of the ground at the time of hearing."*

8. Before us, at the outset, Ld. AR submitted that the sole controversy is with respect to levy of penalty under Section 271(1)(c) of the Act.

9. Before us, Learned AR submitted that against the quantum addition made by AO on account of the undervaluation of stock, assessee had carried the matter before Hon'ble Tribunal. The Hon'ble Tribunal vide consolidated order dated 26.10.2012 in ITA Nos.4342/Del/2010, 4343/Del/2010 and 4344/Del/2010 for A.Ys. 2000-01, 2001-02 & 2002-03 had restored the matter back to the file of the CIT(A) to re-adjudicate the issue as per the directions contained therein. The Learned AR therefore submitted that since the matter has been remitted back to CIT(A) the penalty levied on such additions does not survive and therefore same be deleted.

10. Learned DR on the other hand did not controvert the submissions made by Learned AR but however submitted that since the quantum addition has been restored to the file of the CIT(A), the issue of penalty also be restored back to the CIT(A).

11. We have heard the rival submissions and perused the material available on record. The issue in the present case is with respect to the levy of penalty u/s 271(1)(c) of the Act. We find that the penalty has been levied on the addition made on account undervaluation of stock. We find that the Co-ordinate Bench of Tribunal vide order dated 26.10.2012 in ITA Nos.4342/Del/2010,

4343/Del/2010 and 4344/Del/2010 for A.Ys. 2000-01, 2001-02 & 2002-03 had restored the matter back to the file of CIT(A) to decide the issue afresh as per the directions contained in the order. Since we are of the view that the quantum addition has been set aside to CIT(A), the penalty on such additions does not survive. **Thus the ground of assessee is allowed.**

**12. In the result, appeal of the assessee is allowed.**

**13. As far as ITA No.9522/Del/2019 for A.Y. 2001-02 is concerned, before us, both the parties have submitted that the issue raised in the appeal for A.Y. 2001-02 is identical to that of A.Y. 2000-01. We have hereinabove while deciding the appeal for A.Y. 2001-02 for the reasons stated have allowed the grounds of assessee and thus the appeal of the assessee is allowed. We therefore for similar reasons also allow the appeal of the assessee for A.Y. 2001-02. **Thus the appeal of the assessee is allowed.****

**14. In the combined result, both the appeals filed by the assessee are allowed.**

**Order pronounced in the open court on 28.06.2022**

**Sd/-**

**(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 28.06.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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| Date of dictation  | 16.06.2022 |
| Date on which the typed draft is placed before the dictating Member                  | 16.06.2022 |
| Date on which the approved draft comes to the Sr.PS/PS                               | 22.06.2022 |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | 22.06.2022 |
| Date on which the fair order comes back to the Sr. PS/ PS                            | 28.06.2022 |
| Date on which the final order is uploaded on the website of ITAT                     | 28.06.2022 |
| Date on which the file goes to the Bench Clerk                                       | 28.06.2022 |
| Date on which file goes to the Head Clerk.   |            |
| The date on which file goes to the Assistant Registrar for signature on the order    |            |
| Date of dispatch of the Order  |            |