

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 132 & 133/SRT/2021

ASSESSMENT YEARS: 2007-08 & 2014-15

(Hearing in Virtual Court)

| | | |
|--|----|------------------------------------|
| Nazar Impex Pvt. Ltd., C/o- 408, Saryu Diamond Complex, Jaddakhadi Mahidharpura, Surat-395003. PAN: AACCN 3603 R | Vs | I.T.O., Ward 1(1)(3), Surat. |
| Appellant/Assessee | | Respondent/Revenue |

| | |
|-----------------------|--------------------------|
| Assessee by | Shri Himanshu Gandhi, CA |
| Revenue by | Shri Vinod Kumar, Sr.DR |
| Date of hearing | 27/06/2022 |
| Date of pronouncement | 30/06/2022 |

Order under Section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by the assessee are directed against the separate orders of Id. Commissioner of Income Tax (Appeals) (CIT(A)/ National Faceless Appeal Centre (NFAC), Delhi dated 30/06/2021 and 28/07/2021 which in turn arises against the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) for the assessment years (AY) 2007-08 and 2014-15 respectively.

2. In both these appeals, the assessee(s) have raised certain common grounds of appeals, certain facts are common in both the appeals, thus, both the appeals are clubbed and heard together and are decided by this consolidate order to avoid the conflicting decision. For appreciation of fact, the appeal for A.Y. 2014-15 in ITA No. 133/Srt/2021 is treated as 'lead' case, wherein the assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case and law, the ld. CIT(A) erred in confirming levy of penalty of Rs. 270996/- on basis of invalid notice under Section 274 r.w.s. 271(1)(c) of Income Tax Act, 1961.*
- 2. On the facts and circumstances of the case and law, the ld. CIT(A) erred in confirming levy of penalty of Rs. 270996/- under Section 271(1)(c) of Income Tax Act, 1961.*
- 3. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

3. Brief facts of the case are that the case of assessee was reopened under Section 147 of the Act on the basis of information received from Investigation Wing that a search action was conducted on Rajendra Jain and his group on 03/10/2013. In the search, certain incriminating material was found leading to conclusion that Rajendra Jain group was indulged in providing accommodation entries in the name of bogus sales and unsecured loans. During the search, it was also found that the

assessee was one of the concern controlled by Rajendra Jain group and was involved in providing accommodation entries. On the basis of such information, the assessment of assessee was reopened. The Assessing Officer completed the assessment under Section 143(3) r.w.s. 147 of the Act on 29/01/2016 by making certain additions on estimation basis. The Assessing Officer made following additions:

| Sales | Amount | Rate of commission | Commission income |
|---|----------------|--------------------|-------------------|
| Total turnover | 92,04,86,429/- | | |
| Total Import | 74,82,76,429/- | | |
| Total turnover (Excluding import & group turnover) | 17,22,10,000/- | @ 0.02% | 34,442/- |
| Import made | 74,82,76,429/- | @ 0.20% | 14,96,553/- |
| Loan outstanding at year end | 3,74,22,500/- | @ 0.50% | 1,87,113/- |
| Total commission income earned | | | 17,18,108/- |
| Deduction of expenses of 25% is given for paper transactions & related cost as the such | | | 4,29,527/- |
| Income Assessed | | | 12,88,581/- |

- On appeal before 1d CIT(A), the additions in the quantum assessment was upheld. The Assessing Officer while passing the assessment order initiated the penalty under Section 271(1)(c) of the Act. The assessing officer after receipt of order of 1d CIT(A) in quantum assessment issued notice under

Section 274 r.w.s. 271(1)(c) to the assessee. The assessee vide his reply dated 10/09/2018 contended that the appeal of assessee in quantum assessment was dismissed vide order dated 26/04/2017 and the appeal of assessee in quantum assessment is pending before the Tribunal that the matter may be kept in abeyance. The request of assessee was not accepted by the Assessing Officer. The Assessing Officer levied the penalty @ 100% of tax sought to be evaded thereby levied the penalty of Rs. 2,70,996/- in his order dated 27/03/2019. On appeal before the Id. CIT(A), the penalty was upheld. Further aggrieved, the assessee has filed this appeal before the Tribunal.

4. We have heard the submission of the Id. Authorised Representative (AR) of the assessee and the Id. Departmental Representative (DR) for the Revenue and have gone through the orders of authorities below. The Id. AR of the assessee submits that the Assessing Officer made addition in quantum assessment on estimation basis. It is admitted position under the law that no penalty under Section 271(1)(c) of the Act is

leviable on estimated additions. The ld. AR prayed to delete the entire penalty.

5. On the other hand, the ld. Sr. DR for the Revenue supported the orders of the lower authorities. The ld. Sr. DR submits that the assessee was indulged in providing accommodation entries and while filing return of income furnished inaccurate particulars thereby concealed the real income. The assessing officer levied penalty on the additions made in the assessment.
6. We have considered the rival submission of both the parties and perused the material available on record. We have also gone through the orders of the lower authorities. We find that there is no dispute that the addition in the assessment order under Section 143(3) r.w.s. 147 dated 29/01/2016 was made on estimation basis, which we have recorded above. It is settled law that no penalty is leviable on estimated addition. In this regard, we draw strength from the following decisions:

* Manish Dhirajlal Mehta Vs ACIT in Tax Appeal No.461 & 464 of 2000 and 833 & 836 of 2005 dated 05.02.2014 (Gujarat High Court);

* Vijay Proteins Ltd., Vs CIT (Income Tax Reference No.139 of 1996), (Gujarat High Court);

* Awadhesh Bansiraj Pandey Vs ITO (ITA No.4784/ Mum/2018) Mumbai Tribunal and

* DCIT Vs Anil J Kothari (2048/Ahd/2010), Surat Tribunal.

7. Considering the fact that addition in the assessment order, on the basis of which the penalty was levied, is purely an estimated addition. It is settled position in law that no penalty under section 271(1)(c) can be levied on additions made on estimation. The similar view was taken by the Hon'ble Jurisdictional High Court in Manish Dhirajlal Mehta Vs. ACIT, Vijay Proteins Ltd., Vs. CIT (supra), in Vijay Proteins Vs CIT (supra) and other various cases. No contrary facts or law is brought to our notice by the ld. Sr. DR for the revenue at the time of hearing of these appeals. Therefore, considering the totality of facts and circumstances, we direct to delete the penalty levied under Section 271(1)(c) of the Act.
8. In the result, appeal of the assessee is allowed.
9. Now we take appeal for the A.Y. 2007-08 wherein following grounds have been raised by the assessee.

- “1. On the facts and circumstances of the case and law, the ld. CIT(A) erred in confirming levy of penalty of Rs. 88,337/- on basis of invalid notice under Section 274 r.w.s. 271(1)(c) of Income Tax Act, 1961.
2. On the facts and circumstances of the case and law, the ld. CIT(A) erred in confirming levy of penalty of Rs. 88,337/- under Section 271(1)(c) of Income Tax Act, 1961.
3. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

10. Since the facts in this appeal is similar as in ITA No. 133/Srt/2021 for the Assessment year 2014-15, except variation of addition. The Assessing Officer completed the assessment under Section 143(3) r.w.s. 147 of the Act on 27/03/2015 by making certain additions on estimation basis.

The Assessing Officer made following additions:

| Sales | Amount | Rate of commission | Commission income |
|---|----------------|--------------------|-------------------|
| Total turnover | 29,31,28,138/- | | |
| Total Import | 22,22,18,082/- | | |
| Total turnover (Excluding import & group turnover) | 7,09,10,056/- | @ 0.02% | 14,182/- |
| Import made | 22,22,18,082/- | @ 0.20% | 4,44,436/- |
| Loan outstanding at year end | 1,33,44,485/- | @ 0.50% | 66,722/- |
| Total commission income earned | | | 5,25,340/- |
| Deduction of expenses of 25% is given for paper transactions & related cost as the such | | | 1,31,335/- |
| Income Assessed | | | 3,94,005/- |

11. Considering the totality of facts and circumstances of the case, the finding given by us in the former paras i.e. in ITA No.

133/Srt/2021 for the Assessment year 2014-15 shall apply mutatis mutandis in this appeal also. In the result, the appeal of the assessee is allowed.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced on 30/06/2022, in open court and result was also placed on notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/06/2022

*Ranjan

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Pvt. Secretary, ITAT, Surat