

आयकर अपीलीय अधिकरण
मंबई पीठ " ई "

श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 643/मुं/2022(नि.व. 2012-13)
ITA NO. 643/MUM/2022(A.Y.2012-13)

M/s. Teej Impex Pvt.Ltd.
4 Anna Bhuvan 3rd Floor,
87C Devji Ratansi Marg,
Dana Bunder, Mumbai 400 009
PAN: AABCT-9976-A

..... अपीलार्थी /Appellant

बनाम Vs.

Dy.Commissioner of Income Tax,
Ward 8(3)(1) Mumbai.
Mumbai.
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Dr. P.Daniel

प्रतिवादी द्वारा/Respondent by : Shri Brajendra Kumar

सुनवाई की तिथि/ Date of hearing : 13/07/2022

घोषणा की तिथि/ Date of pronouncement : 13/07/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A) dated 30/03/2022 for the Assessment Year 2012-13,in penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act'].

2. Dr. P.Daniel appearing on behalf of the assessee submitted that the Tribunal in ITA No.2570/Mum/2017 for assessment year 2012-13 decided on 05/07/2019 has set aside the additions and has restored the same back to the file of Assessing Officer for fresh adjudication. Since the additions have been set-aside, penalty proceedings arising there from does not survive. The CIT(A) has recorded this fact and still dismissed the appeal of assessee.

3. Shri Brajendra Kumar representing the Department vehemently defended the impugned order. The Id. Departmental Representative admitted that the Tribunal has set-aside quantum proceedings to the file of Assessing Officer for fresh adjudication.

4. We have heard the submissions made by rival sides. The penalty u/s. 271(1) (c) of the Act has been levied by the Assessing Officer vide order dated 29/03/2019 in respect of following additions:

1. Disallowance of interest expenditure : Rs. 5,28,85,963/-
2. Cessation of liability u/s. 41(1) : Rs. 2,97,06,230/-

The assessee had assailed the aforesaid additions in ITA No.2570/Mum/2017 (supra) before the Tribunal. The Co-ordinate Bench has set-aside both these additions and restored the issue back to the file of Assessing Officer for re-examination. Since, the substratum for levy of penalty has eroded the penalty proceedings arising therefrom does not survive. Consequently, the penalty is quashed.

5. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Wednesday the 13th day of July, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 13/07/2022
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai