

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

AND

SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.45 to 47/IND/2022

Assessment Year: 2011-12 to 2013-14

ACIT, Central-II, Bhopal	<u>Vs.</u>	Soumya Homes Pvt. Ltd. Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AAFCS 3503 C		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri Ashish Porwal, DR	
Date of Hearing	05.09.2022	
Date of Pronouncement	07.09.2022	

ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by a consolidated appeal-order dated 24.12.2021 passed by learned Commissioner of Income-Tax (Appeals)-3 Bhopal [**“Ld. CIT(A)”**], which in turn arises out of three separate penalty-orders all dated 28.03.2018 passed by learned ACIT, Central-II, Bhopal [**“Ld. AO”**] u/s 271(1)(c)/271AAB of the Income-tax Act, 1961 [**“the Act”**] concerning assessment year 2011-12, 2012-13 and 2013-14, the revenue has filed these appeals.

2. The Revenue has raised following grounds of appeal in ITA No. 45/Ind/2022 of AY 2011-12:

“On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the penalty amounting to Rs. 1,10,00,000/- levied u/s 271(1)(c) for A.Y. 2011-12 in the

circumstances when revenue appeal against the order of ITAT is pending before Hon'ble High Court of Madhya Pradesh.”

Grounds raised in other appeals also raise the same controversy, therefore no being reproduced to avoid repetition.

3. Very briefly mentioned, the facts relevant to present appeal are such that the assessments of assessee were completed u/s 153C / 143(3) of the Act, after making certain additions. The assessee challenged those additions to Ld. CIT(A) and thereafter matters travelled upto ITAT, with the result that almost all additions have been deleted / remanded back except an addition of Rs. 2,00,000/- in AY 2012-13 and Rs. 3,00,000/- in AY 2013-14. Ld. DR has informed that the revenue has filed appeals to Hon'ble High Court of M.P. against the order of ITAT and those appeals are pending as of now for adjudication by Hon'ble High Court. During the intervening period, the Ld. AO passed penalty-orders on 28.03.2018 imposing penalty u/s 271(1)(c)/271AAB of the Act on the basis of additions made by Ld. AO, as modified by Ld. CIT(A). The amounts of penalties imposed by Ld. AO, are as under:

AY	Section	Penalty
2011-12	271(1)(c)	1,10,00,000
2012-13	271(1)(c)	3,30,00,000
2013-14	271AAB	1,20,00,000

4. Against these penalty-orders, the assessee filed appeals to Ld. CIT(A), which came to be decided by Ld. CIT(A) vide a consolidated appeal-order dated 24.12.2021, wherein the Ld. CIT(A) has granted substantial relief to the assessee by deleting all penalties imposed by Ld. AO, except the penalty related to the addition of Rs. 2,00,000/- in AY 2012-13 and Rs. 3,00,000/- in AY 2013-14, by holding as under:

“3.4 As evident from the above, the appellant has got substantial relief on quantum addition made by Ld. AO and

confirmed by Ld. CIT(A). The Honourable I.T.A.T., has set aside certain additions and also confirmed certain additions. Honourable I.T.A.T. has confirmed the addition of Rs. 2,00,000/- in AY 2012-13 and Rs. 3,00,000/- in AY 2013-14. Therefore, penalty imposed by the Ld. AO may be considered to be sustainable to the extent of penalty imposed on the above confirmed amounts. Since, the quantum addition in the respective years has been either deleted or set aside to the file of AO for the fresh adjudication, the penalty imposed on the related amount cannot be sustained. Accordingly, the Ld. AO is directed to delete the penalty imposed on the amounts which have been either deleted or set aside by the Honourable I.T.A.T.

3.5 Further, the appellant has not submitted anything on the amount of additions of Rs. 2,00,000/- in AY 2012-13 and Rs. 3,00,000 in AY 2013-14 sustained by the Honourable I.T.A.T., The Ld. AO had considered these amounts for imposing penalty u/s 271(1)(c) and 271AAB of the Act. Therefore, the Ld. AO is directed to re-determine the quantum of penalty imposable on amount of Rs. 2,00,000/- and Rs. 3,00,000/- in AY 2012-13 and 2013-14 respectively.”

5. Being aggrieved by order of Ld. CIT(A), the revenue is now in appeals before us. The sole grievance of revenue is that since the revenue's quantum-appeals against the order of I.T.A.T. are pending before Hon'ble High Court of M.P., the penalties imposed by Ld. AO must survive and the Ld. CIT(A) has erred in granting relief to the assessee.

6. Before us, Ld. DR emphasized the grievance of revenue. Per contra, Ld. AR submitted that the impugned penalties u/s 271(1)(c) / 271AAB are based on the additions made by Ld. AO and since those additions have been largely deleted, the Ld. CIT(A) was legally justified in granting relief to the assessee *qua* the additions deleted / remanded back and direct the Ld. AO to re-compute the penalty *qua* the additions sustained i.e. the addition of Rs. 2,00,000/- in AY 2012-13 and Rs. 3,00,000/- in AY 2013-14. Ld. AR submitted that there is no infirmity in the order of Ld. CIT(A) for the reason that the penalties u/s 271(1)(c) / 271AAB are dependent upon the sustenance of the additions and since the additions themselves have been deleted / remanded back, the penalties too came to an end with respect to those additions.

7. We have considered submissions of both sides. We observe that the Ld. CIT(A) has given relief *qua* the additions deleted / remanded back only and not for the additions sustained. On a careful reading of section 271(1)(c) / 271AAB, we observe that the levy of penalties as well calculation-formula of the penalties contemplated in those sections are linked with the additions. If the additions themselves do not subsist, neither the levy of the penalties have legs to stand nor the calculation of amounts of penalties. Due to this position of law, we do not find any merit in the submission of revenue that the penalties must survive with respect to the additions deleted / remanded back, during the pendency of revenue's quantum-appeals before Hon'ble High Court. Therefore, we are in agreement with the conclusion made by Ld. CIT(A) to the effect that "**Since, the quantum addition in the respective years has been either deleted or set aside to the file of AO for the fresh adjudication, the penalty imposed on the related amount cannot be sustained.**" In this view of matter, we do not find any infirmity or fallacy in the order of Ld. CIT(A). Hence, we uphold the same and dismiss these appeals of revenue which are devoid of any merit.

8. In the result, these appeals of revenue are dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 07.09.2022.

Sd/-

(T.R. Senthil Kumar)
Judicial Member

Sd/-

(B.M. Biyani)
Accountant Member

Indore

Dated 07.09.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	