

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 8062/Del/2019
Assessment Years: 2015-16

Rathi Bars Limited, A-24/7, Mohan Co- operative Industrial Estate, Mathura Road, New Delhi-1100 44	Vs.	ACIT- CC-16, New Delhi
PAN :AAACR0737N		
(Appellant)		(Respondent)

Assessee by	Shri Ramkumar Verma, Manager
Department by	Ms. Maimum Alam, Sr. DR

Date of hearing	21.09.2022
Date of pronouncement	21.09.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 31.07.2019
of learned Commissioner of Income-Tax (Appeals)-26, New Delhi,

confirming penalty imposed under Section 271AAB of the Income-Tax Act,1961 pertaining to assessment year 2015-16.

2. We have considered rival submissions and perused material on record. As could be seen from the facts on record, while completing the assessment under Section 143(3) of the Act, the assessing officer made the following additions:

- i) Undisclosed income on sales made to M/s. Hari Iron India Ltd.; Rs.23,7535
- ii) Undisclosed income on sales made out of books; Rs.2,45,856
- iii) Difference in stocks: Rs.58,40,136

3. Assessee contested the aforesaid additions before learned Commissioner (Appeals). Learned Commissioner (Appeals) granted partial relief to the assessee by sustaining the additions made on account of difference in stocks to the extent of Rs.17,67,071. Against the order of learned Commissioner (Appeals), assessee preferred an appeal before the Tribunal. However, during the pendency of the assessee's appeal before the Tribunal, the assessing officer passed an

order on 30.03.2019 imposing penalty of Rs.12,21,997 under Section 271AAB of the Act on the additions remaining after order of learned Commissioner (Appeals). The penalty so imposed was also confirmed by learned Commissioner (Appeals).

4. We have observed, while deciding assessee's appeal contesting the additions sustained by learned Commissioner (Appeals), the Tribunal vide order dated 28.02.2022 in ITA No.1327/Del/2018 and Ors. has deleted the two additions out of the three made by the assessing officer. In other words, the Tribunal deleted the additions of Rs.23,735 and Rs.2,45,856. In so far as addition of Rs.17,67,071 made on account of difference in stock, the Tribunal has restored the issue to learned Commissioner (Appeals) for de novo adjudication. Thus, in view of the changed scenario because of the decision of the Tribunal in the quantum proceedings, in our opinion, the issue relating to imposition of penalty under Section 271AAB of the Act has to be restored back to the assessing officer as factual position relating to the additions based on which penalty was imposed have changed. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the matter to the assessing officer

for initiating penalty proceedings afresh, if warranted, depending upon the status of the addition made on account of difference in stock after culmination of the appellate proceedings.

5. Needless to mention, before imposing penalty, the assessing officer must extend adequate opportunity of being heard to the assessee by following the procedure laid down in the Statute.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 21st September, 2022.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 21st September, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	21.09.2022
2.	Date on which the draft of order is placed before the Dictating Member:	23.09.2022
3.	Date on which the draft of order is placed before the other Member:	.09.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	26.09.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	28.09.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	30.09.2022
7.	Date on which the final order is uploaded on the website of ITAT:	30.09.2022
8.	Date on which the file goes to the Bench Clerk	30.09.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	