

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.606/Mum/2022
(A.Y. 2008-09)**

Renaissance Infrastructure (Now known as M/s Renaissance Indus Infra Pvt. Ltd.) 601, 6 th Floor, Hubtown Solaries, Prof.N.S. Phadke Marg, Opp. Teli Galli, Vijay Nagar, Mumbai – 400 069	Vs.	National Faceless Appeal Centre (NFAC), Delhi 710, 7 th Floor, Aaykar Sadon, Bodhi Towers, Salisbury Park, Gultekadi, Pune 411037
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJFR8593C		
Appellant	..	Respondent

Appellant by :	Gautam Thacker
Respondent by :	Mahita Nair

Date of Hearing	20.10.2022
Date of Pronouncement	26.10.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The sole issue in the appeal of the assessee filed against the order of ld. CIT(A)-11, is sustaining the penalty levying Rs.27,70,185/- u/s 271(1)(c).

2. The fact in brief is that assessment u/s 143(3) r.w.s 153C of the Act was finalized on 29.03.2014 and total income was assessed at Rs.4,57,00,000/- against the return of income of Rs.nil filed by the

assessee. During the course of the search proceedings u/s 132 in the case of one of the partners of the assessee namely Sh. Mayur Suchak at Ghatkopar (E) documents belonging to the assessee concern were found and seized. Assessment u/s 143 r.w.s 153C of the Act was completed on 29.03.2014 assessing the total income at Rs.45,700,000/- after making addition on account of unaccounted cash loan and unaccounted cash receipt of Rs.3,12,00,000/- and Rs.1,45,00,000/- respectively.

3. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has enhanced the cash receipt by Rs.81,50,000/- vide order u/s 250 of the Act dated 29.03.2014. The ld. CIT(A) has also levied penalty of Rs.27,70,185/- u/s 271(1)(c) corresponding to the enhancement of Rs.81,50,000/- vide order u/s 271(1)(c) of the Act dated 01.02.2022.

4. During the course of appellate proceedings before us at the outset the ld. counsel has brought to our notice that coordinate bench of the ITAT, in the case of Renaissance Indus Infra Pvt. Ltd. Vs. DCIT, CC-1 i.e ITA No. 837/Mum/2021 A.Y. 2008-09 dated 29.04.2022 has deleted quantum addition on the basis of which the impugned penalty was levied by the ld. CIT(A).

On the other hand the ld. D.R relied on the order of ld. CIT(A).

5. With the assistance of the ld. representative we have gone through the decision of ITAT as discussed supra. The relevant operating para is reproduced as under:

“42. Considered the rival submissions and material placed on record, more particularly, the reply filed by the assessee to the CIT(A) in response to the enhancement notice. We find that the CIT(A) recorded the reply filed by the assessee on page no 35 of his order; however, still enhanced the income of the assessee. The relevant para of the order is reproduced below:

“Further, in reply to the query in the show cause, the details for A.Y. 2008-09, 2011-12 & 2012-13 were provided indicating that these were not taken note in the assessment order by the AO. It was stated that the amount was not taken in the assessment order for addition, as the amount was refunded back and the same can be verified from the cash book. It was stated that the assessee was unable to obtain various approvals in time and the project was delayed and therefore many persons who have booked the warehouses, demanded refund and also compensation by way of rent and interest which was paid to them.”

43. *We do not find any merit in the action of the CIT(A) inasmuch as it clear from the perusal of the cash book that the assessee has subsequently refunded the amount. The CIT(A) has not disputed the aforesaid fact, however, made the enhancement only by stating that the AQ has missed out in including these receipts while making the addition.*

44. *In view of the above, when the assessee has already refunded the same and it can never be part of business receipt, accordingly, we reverse the action of the CIT(A) and direct the AO to delete the aforesaid addition of Rs.81,50,000 made by way of enhancement. Thus, ground of appeal no 5 raised by the assessee is ALLOWED.”*

After perusal of the decision of ITAT as supra it is clear that the quantum addition of Rs.81,50,000/- has been deleted. Since, the quantum addition on the basis of which the impugned penalty levied has been deleted, therefore, the penalty levied became infructuous. According, we direct the A.O to delete the penalty. Therefore, the grounds of appeal of the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.10.2022

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 26.10.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.