

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.103 to 106/IND/2022
Assessment Year: 2008-09 & 2011-12 to 2013-14

ACIT, Central-2, Bhopal	<u>Vs.</u>	Swadesh Builders and Developers, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AARFS 6977 P		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, DR	
Date of Hearing	14.11.2022	
Date of Pronouncement	18.11.2022	

ORDER

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

Feeling aggrieved by a consolidated appeal-order dated 16.02.2022 passed by learned Commissioner of Income-Tax (Appeals)-3 Bhopal [**Ld. CIT(A)**], which in turn arises out of separate penalty-orders all dated 30.03.2019 passed by learned ACIT, Central-II, Bhopal [**Ld. AO**] u/s 271(1)(c) of the Income-tax Act, 1961 [**the Act**] concerning assessment year 2008-09, 2011-12, 2012-13 and 2013-14, the revenue has filed these appeals.

2. Heard the learned Representatives of both sides and case records perused.

3. The registry has informed that that the present appeals are filed after a delay of few days and therefore time-barred. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu

extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, these appeals are proceeded with for hearing, there being no delay.

4. The Revenue has raised following grounds of appeal in ITA No. 103/Ind/2022 of AY 2008-09:

“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the penalty amounting to Rs. 1,10,82,426/- levied u/s 271(1)(c) for A.Y. 2008-09 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 are identical, therefore not being reproduced to avoid repetition.

5. Very briefly mentioned, the facts relevant to present appeals are such that the assessments of assessee were completed u/s 153A / 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 all additions have been deleted. Ld. DR 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 30.03.2019 imposing penalty u/s 271(1)(c) 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
2008-09	271(1)(c)	1,10,82,426
2011-12	271(1)(c)	92,29,822
2012-13	271(1)(c)	1,22,19,920
2013-14	271(1)(c)	89,90,064

6. 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 16.02.2022, wherein the Ld. CIT(A) has deleted the penalties by holding as under”

“3.4 As evident from the above, the appellant has got relief on quantum addition made by Ld. AO and confirmed by Ld. CIT(A). The Honourable ITAT, has set aside the additions. Since, the quantum additions in the respective years have been deleted, 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 deleted by the Honourable ITAT”.

7. 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.

8. Before us, Ld. DR emphasized the grievance of revenue. Per contra, Ld. AR submitted that the impugned penalties u/s 271(1)(c) are based on the additions made by Ld. AO and since those additions stand deleted, the Ld. CIT(A) was legally justified in granting relief to the assessee *qua* the additions deleted. 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) are dependent upon the sustenance of the additions and since the additions themselves have been deleted, the penalties cannot survive.

9. We have considered submissions of both sides. We observe that the Ld. CIT(A) has given relief *qua* the additions deleted. On a careful reading of section 271(1)(c), 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, 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). 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.

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

Order pronounced on 18/11/2022 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

This Order pronounced in Open Court on 18/11/2022

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

Dated 18.11.2022

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	15.11.22
2.	Date of typing & draft order placed before the Dictating Member	15.11.22
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	