

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.193/Ind/2022
Assessment Year: 2014-15

ACIT, Central-1, Bhopal	<u>Vs.</u>	M/s. Dilip Buildcon Ltd. Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AACCD 6124 B		
Assessee by	Shri Hitesh Chimnani, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	06.01.2023	
Date of Pronouncement	30.01.2023	

ORDER

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

Feeling aggrieved by appeal-order dated 18.05.2022 passed by learned Commissioner of Income-Tax (Appeals)-3 Bhopal [**Ld. CIT(A)**], which in turn arises out of penalty-order dated 22.10.2020 passed by learned ACIT, Central-1, Bhopal [**Ld. AO**] u/s 271(1)(c) of the Income-tax Act, 1961 [**the Act**] concerning assessment year 2014-15, the revenue has filed this appeal on following solitary ground:

“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the penalty amount of Rs.

14,66,90,000/- levied u/s 271(1)(c) in the circumstances when revenue appeal against the order of ITAT dated 27.01.2022 is pending before Hon'ble High Court of Madhya Pradesh.”

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

3. Briefly stated the facts are such that the assessment of assessee was completed u/s 143(3) of the Act, after making certain additions. The assessee challenged those additions to Ld. CIT(A) and thereafter matter travelled upto ITAT, with the result that all additions have been deleted. Ld. DR informed that the revenue has filed appeal to Hon'ble High Court of M.P. against the order of ITAT and the appeal is pending as of now for adjudication by Hon'ble High Court. During intervening period, the Ld. AO passed penalty-order on 22.10.2020 imposing a penalty of Rs. 14,66,90,000/- u/s 271(1)(c) on the basis of additions made by Ld. AO, as modified by Ld. CIT(A).

4. Against aforesaid penalty-order, the assessee filed appeal to Ld. CIT(A), which came to be decided by Ld. CIT(A) vide order dated 18.05.2022, wherein the Ld. CIT(A) deleted penalty by holding as under:

“3.1.3 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”.

5. Being aggrieved by order of Ld. CIT(A), the revenue is now in appeal before us. The sole grievance of revenue is that since the revenue's quantum-appeals against the order of I.T.A.T. is pending before Hon'ble

High Court of M.P., the penalty 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 penalty u/s 271(1)(c) was based on the additions made by Ld. AO and since those additions stood deleted fully, the Ld. CIT(A) was legally justified in granting relief to the assessee. Ld. AR submitted that there is no infirmity in the order of Ld. CIT(A) for the reason that the penalty u/s 271(1)(c) is dependent upon the sustenance of the additions and since the additions themselves have been deleted, the penalty cannot survive.

7. We have considered submissions of both sides. We observe that the Ld. CIT(A) has given relief because the entire additions stood deleted. On a careful reading of section 271(1)(c), we observe that the levy of penalty as well calculation-formula of the penalty contemplated in that section is linked with the additions. If the additions themselves do not subsist, neither the levy of the penalty have legs to stand nor the calculation of amount of penalty. Due to this position of law, we do not find any merit in the submission of revenue that the penalty must survive, during the pendency of revenue's quantum-appeal 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 this appeal of revenue which is devoid of any merit.

8. Before parting, we make it clear that in a case the revenue succeeds in its pending appeal before Hon'ble High Court, then the AO shall be at liberty and entitled to re-initiate penalty proceedings as per relevant provisions of the act and the rules made thereunder in accordance with the outcome of the judgement of Hon'ble High Court.

9. In the result, this appeal of revenue is dismissed.

Order **pronounced on 30/01/2022** 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 / /2022

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

Dated 30.01.2023

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	9.1.23
2.	Date of typing & draft order placed before the Dictating Member	9.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	9.1.23
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	