

आयकर अपीलीय अधिकरण
मुंबई पीठ “ एच”, मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह , लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “ H ”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH , ACCOUNTANT MEMBER
आअसं. 2799/मुं/ 2022 (नि.व. 2009-10)
ITA NO. 2799/MUM/2022(A.Y.2009-10)

M/s. Hinglaj Metals & Alloys Pvt. Ltd.,
2 Sheetal CHSL, Grnd Floor,
Saptrishi Sankul Ovripada,
Dahisar East, Mumbai – 400 068.
PAN: AAACH-9744-H

..... अपीलार्थी /Appellant

बनाम Vs.

CIT(A), NFAC,
Delhi.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharmil Jhaveri

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 16/01/2023

घोषणा की तिथि/ Date of pronouncement : 16/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short ‘the CIT(A)’] dated 01/08/2022 for the assessment year 2009-10, confirming penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 [in short ‘the Act’].

2. This appeal is time barred by 33 days. The assessee has filed an application seeking condonation of delay. After perusing the application we are satisfied that the delay in filing of the appeal is not intentional but has occurred due to bonafide reasons stated in application. The delay of 33 days in filing of appeal is condoned and the appeal is admitted for hearing on merits.

3. Shri Dharmil Jhaveri appearing on behalf of the assessee submits that the Assessing Officer has levied penalty u/s. 271(1)(c) of the Act in respect of alleged bogus purchases. The Assessing Officer made addition of the entire alleged bogus purchases. The CIT(A) confirmed the assessment order. The assessee carried the issue in appeal before the Tribunal. The Tribunal in ITA No.2877/Mum/2018, vide order dated 05/12/2019 has restored the issue to the file of CIT(A). The Id. Authorized Representative for the assessee submits that since the Tribunal has restored assessment proceedings back to the file of CIT(A), the present penalty proceedings are not sustainable. The Id. Authorized Representative for the assessee further pointed that the Tribunal in appeal by the assessee against levy of penalty u/s. 271(1)(c) of the Act for assessment years 2010-11 and 2011-12 has restored the appeal to the file of CIT(A).

4. Per contra, Shri Tejinder Pal Singh Anand representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. However, Id. Departmental Representative fairly admitted that in quantum proceedings the appeal of assessee has been restored by the Tribunal to the CIT(A).

5. Both sides heard, orders of authorities below examined. We find that the Co-ordinate Bench in assessee's appeal in ITA No.2877/Mum/2018(supra)

against assessment for impugned assessment year has restored the appeal to the file of CIT(A) for fresh adjudication. Since, quantum proceedings have been restored to the First Appellate Authority, we deem it appropriate to restore the penalty proceedings u/s. 271(1)(c) of the Act as well to the CIT(A). The CIT(A) shall decide this appeal denovo after affording reasonable opportunity to the assessee for making the submissions. The assessee is directed to comply with the notices issued by the CIT(A). In case, the assessee fails to respond to the notices, the CIT(A) is at liberty to take adverse view. The impugned order is set-aside and the appeal is allowed for statistical purpose.

Order pronounced in the open court on Monday the 16th day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 16/01/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar),
ITAT, Mumbai