

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3236/M/2022  
Assessment Year: 2010-11**

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| Asst. Commissioner of<br>Income Tax,<br>Circle-16(1),<br>Room No.439, 4 <sup>th</sup> Floor,<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Friday Entertainment<br>Ventures Pvt. Ltd.,<br>Suite 1, Taj Business<br>Centre,<br>Taj Wellington Mews,<br>33 Nathalal Parekh Marg,<br>Colaba,<br>Mumbai – 400 005<br><b>PAN: AABCF1849E</b> |
| (Appellant)  |     | (Respondent)  |

**Present for:**

Assessee by : None  
Revenue by : Shri Amrita Singh, D.R.

Date of Hearing : 01 . 02 . 2023  
Date of Pronouncement : 28 . 02 . 2023

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Asst. Commissioner of Income Tax, Circle-16(1), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 03.11.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) deleting the penalty levied by Assessing Officer (AO) under section 271(1)(c) of the Income Tax

Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter-alia that :-

*“1. Whether based on the facts and the circumstances of the case, the Ld. CIT(A) erred in deciding the present appeal against the penalty order when the appeal against the quantum order is still pending especially so, when assessee requested to keep the present appeal in abeyance till the disposal of quantum appeal.*

*2. Whether based on facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty of Rs 12,86,58,052/- referring the remand report dated 16.01.2019 which was for the quantum appeal proceedings and is not admissible to the present penalty appeal decided by Ld. CIT(A) without giving opportunity to revenue.*

*3. Whether based on the facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied as per the law and Income Tax Act in relation to addition made u/s 41(1) of the Income Tax Act of as per the law and Income Tax Act. Ld. CIT(A) did not appreciate the fact that during the remand proceedings the assessee itself admitted that out of the total 9.86Cr. of Sundry Creditors Rs 2.10 Cr. was still outstanding therefore the addition u/s 41 of the IT Act, 1961 is not decided in quantum appeal.*

*4. Whether based on facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied as per the law and Income Tax Act in relation to made u/s 68 of the Income Tax Act of when during the remand proceedings (for quantum appeal proceedings) the assessee has not submitted the proper confirmations insofar as Rs 3.00 Cr claimed to have obtained from Mr. Madhu Mantena was in fact not received directly from him and was received from Religare Finvest Ltd. During the remand proceedings assessee has submitted the copies of ITR in respect of only 2 loan creditors out of total 8 loan creditors. Therefore, the details and confirmation submitted by the assessee is also questionable and is yet to decided in the quantum appeal.*

*5. Considering that when substantive factual issues were to be decided in the quantum appeal, the Ld CIT (A) erred in deleting penalty amount prematurely.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed under section 143(3) read with section 144 of the Act at the total income of Rs.25,16,66,884/- by making addition of Rs.9,86,37,820/- and Rs.11,33,28,930/- under section 41(1) of the

Act and under section 68 of the Act respectively, penalty proceedings under section 271(1)(c) of the Act were initiated. Declining the contentions raised by the assessee the AO proceeded to levy the penalty to the tune of Rs.12,86,58,052/- @ 100% of the tax sought to be evaded under section 271(1)(c) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the penalty levied by the AO by allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. Notice through Registered Post with Acknowledgment Due (RPAD) was issued to the assessee at the given address as recorded in the income tax record which received back with the report that no such entity is working at the given address. The Ld. D.R. stated that the Department has no other address than the recorded address given in the assessment order as well as the order passed by the Ld. CIT(A). So we are of the considered view that the assessee who has himself filed the appeal by recording his address on which the notice was issued, is not interested in prosecuting the present appeal. So the Bench has decided to dispose of the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. At the very outset it is brought to the notice of the Bench by the Ld. D.R. for the Revenue that the present appeal is liable to be allowed on the sole ground that quantum appeal against the assessment order is still pending and during the pendency of the quantum appeal, the appeal filed under section 271(1)(c) of the Act cannot be decided by the Ld. CIT(A) and drew our attention towards para 5.2.2 of the impugned order.

7. We have perused para 5.2.2 of the impugned order passed by the Ld. CIT(A) wherein reference of pendency of the quantum appeal against the assessment order on the basis of which the penalty has been levied is still pending. For ready perusal para 5.2.2 of the impugned order passed by the Ld. CIT(A) is extracted as under:

*“5.2.2 In the light of such facts, I am afraid; there is no such occasion to confirm action of Ld. A.O. in imposing the penalty related to addition of Rs. 11,33,28,930u/s 68 of the Act, and relief has to be given to the appellant company as it is entitled for the same. The amount of related addition being only due to non verification of unsecured loans and that too without basis of any independent enquiry cannot be confirmed and is directed to be deleted. Before parting, it will be not out of place to mention that in the w/submission it was prayed to keep these penalty appeal proceedings in abeyance till the appeal against the quantum proceedings is decided in response to 250 notice wherein the appellant company was requested to convey the fate of appeal of the quantum Assessment Order as the very premise of the present appeal stemmed from the Assessment Order which itself was under appeal. However, seeing that the present appeal was filed on 18.03.2014 since when more than 8 years have already passed, there is no point in lingering this appeal further.”*

8. In view of the matter, we are of the considered view that when quantum appeal is pending before the Ld. CIT(A) against the assessment order on the basis of which penalty has been levied by the AO, the appeal filed by the assessee before the Ld. CIT(A) against the penalty order could not have been decided till disposal

of the quantum appeal pending before him. The Ld. CIT(A) has brushed aside the factum brought on record by the assessee that quantum appeal is still pending merely on the ground that “the present appeal was filed on 18.03.2014 and since then more than 8 years have already been passed, there is no point in lingering this appeal further”, which is not a plausible reason to decide the penalty appeal during the pendency of the quantum appeal pending before the Ld. CIT(A).

9. In these circumstances, we have no option except to set aside the impugned order passed by the Ld. CIT(A) and to remand the same back to decide afresh after disposal of the quantum appeal filed by the assessee pending before the Ld. CIT(A).

10. Resultantly, the appeal filed by the Revenue is allowed for statistical purposes.

**Order pronounced in the open court on 28.02.2023.**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 28.02.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.