

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 214/Ind/2018
Assessment Year: 2009-10**

Smt. Manjari Choudhary 11/2 Malharganj, Indore (Appellant / Assessee)	बनाम/ Vs.	ACIT-1(2) Indore (Revenue / Respondent)
P.A. No. ABNPC 7873 M		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing:	10.04.2023 / 18.04.2023	
Date of Pronouncement:	19.04.2023	

आदेश / O R D E R

Per B.M. Biyani, AM:

Feeling aggrieved by appeal-order dated 26.12.2017 passed by learned CIT(A)-II, Indore [**Ld. CIT(A)**], which in turn arises out of penalty-order dated 26.03.2013 passed by the learned ACIT-1(2), Indore [**Ld. AO**] u/s 271(1)(c) of the Income-tax Act, 1961 [**the Act**] for assessment-year [**AY**] 2009-10, the assessee has filed this appeal on the grounds as mentioned in Appeal-Memo placed on record.

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

3. Ld. AR initially briefed us about the status of quantum-proceeding in assessee's case. He submitted that originally the assessment of relevant AY 2009-10 under consideration was completed by AO u/s 143(3) vide order dated 30.12.2010 after making certain disallowances/additions. Against this assessment-order, the assessee went in first-appeal to CIT(A) in Appeal No. IT-438/10-11/219; which was dismissed by CIT(A) vide order dated 19.12.2011. The assessee then carried matter to ITAT, Indore Bench in ITA No. 126/Ind/2012 and the ITAT has already decided appeal on 03.09.2012, a copy of the order is placed on record. Drawing our attention to Page No. 3 of the order of ITAT, Ld. AR demonstrated that the ITAT has set aside the aforesaid order of first-appeal dated 19.12.2011 passed by CIT(A) and remanded the matter back to CIT(A) for a fresh adjudication of assessee's first-appeal. Thus, the quantum-appeal of assessee is pending, as of now, before Ld. CIT(A).

4. Then, Ld. AR carried us to the subject-matter of present-appeal before us. He submitted that vide penalty-order dated 26.03.2013, the AO imposed penalty of Rs. 1,20,00,000/- u/s 271(1)(c) *qua* the disallowances/additions made in aforesaid assessment-order dated 30.12.2010. The assessee filed first-appeal against such penalty-order to Ld. CIT(A). The Ld. CIT(A) has dismissed assessee's appeal vide order dated 26.12.2017 on the premise that the assessee's first-appeal in quantum-proceeding stands dismissed. But, the fact

is that first-appeal is pending before CIT(A), pursuant to ITAT order, as narrated in preceding paragraph. Therefore, Ld. AR prays, the present-appeal which involves the issue of penalty u/s 271(1)(c) inextricably linked with the additions/ disallowances made in quantum-proceeding, should also be remanded back to the file of Ld. CIT(A) for a fresh adjudication based on outcome of quantum-proceeding.

5. Ld. DR could not show any objection to the facts submitted by AR. Further, he fairly agreed to the prayer made by Ld. AR.

6. In view of the congruence of parties as discussed above, we are inclined to accept the prayer of Ld. AR. Therefore, this matter is remanded back to Ld. CIT(A) who shall decide it afresh after taking into account the outcome of quantum-appeal pending before him.

7. Resultantly, this appeal of assessee is allowed for statistical purpose.

Order pronounced in open court on 19/04/2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 19/04/2023

Patel/Sr. PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
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 despatch of the Order	