

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

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.95/SRT/2023**

**(निर्धारणवर्ष / Assessment Years: (2014-15)**

**(Virtual Court Hearing)**

GTPL Rajwadi Network Pvt. Ltd. Plot No.72 Shop No.1-2-3, Bamroli Road, Bamroli-394210	<b>Vs.</b>	Dy. Commissioner of Income-Tax, Circle-1(1)(2), Surat-395001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCG 1544 M</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Assessee by : Shri Sapnesh R Sheth, CA

राजस्व की ओर से/Revenue by : Shri Vinod Kumar, Sr- DR

सुनवाई की तारीख/ **Date of Hearing** : **08/05/2023**

घोषणा की तारीख/**Date of Pronouncement** : **31/05/2023**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by National Faceless Appeal Centre, Delhi (in short, NFAC/Ld. CIT(A) dated 05.01.2023 which in turn arises out of a penalty order passed by the Assessing Officer under section 271(1) (c) of the Income Tax Act, 1961 (in short 'the Act'), dated 28.06.2017.

2. Grounds of appeal raised by the assessee are as follows:

*"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NFAC has erred in penalty confirming the action of Assessing Officer in imposing penalty u/s 271(1)(c) of the I.T. Act, 1961 by sustaining the penalty to the extent of Rs.1,56,587/- as against Rs.4,69,761/- imposed by Assessing Officer.*

*2. It is therefore prayed that penalty imposed by Assessing Officer to the tune of Rs.1,56,587/- and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*3. On the facts and circumstances of the case as well as law on the subject, learned CIT(A), NFAC has erred in passing ex-parte order although adjournment was taken upto 09.01.2023.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Succinct facts qua the issue are that assessee before us is a private limited company and filed its return of income on 17.10.2014, declaring total income of Rs.59,11,510/-. The assessment was completed u/s 143(3) of the Act on 17.12.2016, determining total income at Rs.65,78,250/-, by making addition on account of disallowance of Impact Fees, interest on late payment of TDS and payment towards material purchase. During the assessment proceedings, it was observed by AO that the assessee-company had claimed Impex Fees of Rs.5,06,754/- for the payment made to Surat Municipal Corporation ('SMC' for short) for regularization of unauthorized construction of building. As the Impex Fees was penal in nature for violation of law hence was not allowable as expenditure and accordingly the Assessing Officer added the same and initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. During the course of penalty proceeding, the assessee was provided several opportunities of being heard to counter the findings of the Assessing Officer, however, it did not care to comply with the notices issued from time to time by filing submission in support of its claim. Accordingly, penalty of Rs.4,69,761/- being 300% of tax sought to be evaded was imposed by the Assessing Officer u/s 271(1)(c) of the Act.

4. Aggrieved by the order of Assessing Officer the assessee carried the matter in appeal before Id. CIT(A) who has restricted the penalty being 100% of tax sought to be evaded. That is, the penalty amount was restricted by Id CIT(A) to Rs.1,56,587/- being 100% of tax sought to be evaded. Feeling aggrieved and dissatisfied with the impugned order of Id CIT(A), the assessee is in appeal before us.

5. Shri Sapnesh R Sheth, at the outset stated that Impex Fees was not penal in nature for violation of any law, it is a normal business expenditure, hence penalty should not be imposed. The Id Counsel also argued that show cause notice was issued by Assessing Officer via e-mail and assessee was not aware of the same,

therefore compliance could not be made during penalty proceedings. Further with regard to impact fee of Rs.5,06,754/- claimed in profit and loss account, the Id Counsel submitted that Architect Engineer of assessee has determined the amount payable and the same was paid through him, therefore, owing to technical error impact fees was debited to professional fees account thus, error was committed through inadvertence and there was no intention to furnish inaccurate particulars of income.

Hence, penalty is not penal in nature, the amount has been incurred during the course of doing business, hence, penalty should not be levied.

6. On the other hand, Ld. Sr-DR for the Revenue submitted that penalty imposed by Assessing Officer u/s 271(1)(c) of the Act in on account for furnishing inaccurate particulars of income, in its return of income, therefore penalty should be levied.

7. We have heard the learned counsel appearing on behalf of the respective parties at length. We note that the issue under consideration is no longer *res integra*, and the amount Impex Fees paid to SMC is allowable as business expense. We also note that Impex Fees is not penal in nature, thus there is no any violation of any law, for that reliance can be placed on the order of Coordinate Bench in the case of Shree Khodiyar Corporation vs. ACIT, Circle-3, Surat in ITA No.1901/Ahd/2009 for A.Y 2006-07, dated 25.09.2009, wherein it was held as follows:

*“5. In the appeal by the department, the only issue is whether the amount of Rs.7,00,000 paid by the assessee to SMC (Surat Municipal Corporation) is allowable as a deduction in computing the profits of the business of the assessee. The amount was paid as ‘premium fee’ for covering the balconies and not as penalty. In the approved plan, the balconies were to be left uncovered. According to the assessee, deviation from the approved plan was allowed on payment of premium fee as per the circular issued by the Corporation. These arguments were rejected by the Assessing Officer, relying on the Explanation below sec.37(1) inserted retrospectively. The CIT(A) however held that the payment of the impact fee, as it was called, was not for infraction of any law, but only for changing the approved plan and hence cannot be called a penalty. He referred to the judgment of the Delhi High Court in CIT v Loknath and Co (Construction) (1984) 147 ITR 624).*

*6. We have considered the matter in the light of the arguments advanced before us. The Ahmedabad Bench of the Tribunal was concerned with the identical controversy in ITA Nos. 1681 & 1682/AHD/2006 and CO Nos. 210 &*

211/AHD/2006 in the case of ACIT v Enviro Control Associates (I) Pvt. Ltd., Surat and by order dated 20-3-2009 has held, following the Delhi High Court's judgment cited supra that the payment made to Surat Municipal Corporation was not in the nature of penalty for infraction of law and was allowable as a deduction in computing the business profits. Since the facts relating to the controversy are the same in the case before us, respectfully following the aforesaid order of the Tribunal, we confirm the decision of the CIT(A) and dismiss the appeal of the revenue."

8. We note that penalty should not be levied on account of technical error which was committed by the assessee and there was no intention to furnish inaccurate particulars of income for that reliance can be placed on the judgment of Hon'ble Supreme Court in the case of M/s Price Waterhouse Copers ( P) Ltd Vs. Commissioner of Income Tax [2012] 25 taxmann.com 400 (SC) wherein it was held that imposition of penalty would be unwarranted in a case, where the assessee has committed inadvertently and *bona fide* error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars of income.

9. Therefore, respectfully following the above binding precedent in the case of Shree Khodiyar Corporation (supra), we delete the penalty sustained by Id CIT(A).

10. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 31/05/2023 by placing result on notice board.

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

Sd/-  
**(Dr. A.L. SAINI)**  
ACCOUNTANT MEMBER

सूरत /Surat / दिनांक/ Date: 31/05/2023

Dkp Outsourcing Sr.P.S.

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Sr. Private Secretary/Private  
Secretary/ Assistant Registrar,  
ITAT, Surat