

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.23/GTY/2022
Assessment Year: 2012-13**

Pabitra Boro Babupara, Ward-03, P.O. Tangla, district Udalguri (BTAD), Assam – 784521. (PAN:AEIPD1877Q)	Vs.	Income-tax Officer, Ward – Mangaldai.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manoj Nahata, FCA
Respondent by : Shri N. T. Sherpa, JCIT

Date of Hearing : 06.06.2023
Date of Pronouncement : 09.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the penalty order passed by Ld. CIT(A), Guwahati-1, Guwahati vide Appeal No. Mangal-2/15-16/214 dated 24.09.2020 u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2012-13.

2. The moot point raised in this appeal is on imposition of penalty of Rs.3,17,04,016/- u/s. 271(1)(c) of the Act when the assessment in relation to which penalty has been imposed has been set aside by the Coordinate Bench of ITAT, Gauhati in the quantum appeal of the assessee in ITA No. 56/GTY/2022 dated 08.11.2021.

3. Brief facts of the case are that the assessee was assessed u/s. 143(3) on 13.03.2015 wherein the assessee was directed to substantiate the exemption claimed u/s. 10(26). The assessee is stated to be Scheduled Tribe, resident of Tangla Town under Harisinga revenue circle, P. S. Tangla in the district of Udalguri of Bodoland Territorial Council, Assam and is stated to be engaged in civil contract work and sale/supply business. Assessment u/s. 143(3) of the Act was completed by making an addition of Rs.17,42,310/- as income from other sources outside the purview of section 10(26) of the Act. Assessee went in appeal before the Ld. CIT(A) which was dismissed and the assessed income was enhanced by the Ld. CIT(A) by an amount of Rs.10,30,95,325/- by treating the purported claim of exempt income as bogus. Thereafter, penalty proceedings were initiated u/s. 271(1)(c) and a penalty of Rs.3,17,04,016/- was imposed u/s. 271(1)(c) of the Act.

4. Against the order of Ld. CIT(A) in relation to assessment including enhancement of income, assessee went in appeal before the Tribunal in ITA No. 56/Gau/2020. The Coordinate Bench of ITAT pronounced its decision on 08.11.2021 whereby the order was set aside, restoring the matter back to the file of Ld. AO for fresh adjudication. The relevant finding given by the Coordinate Bench is reproduced as under:

“Keeping in view the submissions made by the Ld. AR and documents placed before us in the paper book we find the impugned order is not sustainable since the turnover could not be considered to be assessee’s income. Therefore, we deem it fit to set aside the impugned order & restore the matter back to the file of the Ld. AO for fresh adjudication with a direction to the assessee to substantiate its claim with satisfactory documentary evidences.”

5. Consequent to this direction by the Coordinate Bench, an appeal effect giving order of assessment u/s. 143(3) read with sec. 254 was passed by the Ld. AO dated 31.03.2023 wherein the total income is assessed at Rs.25,77,380/-. The demand raised by way of this assessment has been paid by the assessee. Considering the above facts on record, the very basis on which the impugned penalty has been imposed has been set aside by the Coordinate Bench, rendering this impugned order of penalty infructuous, by virtue of de novo assessment directed to be completed by the Ld. AO which also has been done as noted above. Accordingly, we dismiss this present appeal as infructuous.

6. In the result, appeal of the assessee is dismissed as infructuous.

Order pronounced in the open Court on 9th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 9th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Guwahati-1, Guwahati
 4. CIT,
 5. DR, ITAT, Gauhati Bench, Gauhati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata