

2. We heard the parties and perused the record. The assessee is engaged in the business of trading in grass. In the assessment proceedings, the Assessing Officer made addition towards Long Term Capital Gains of Rs.6.50 crores. The Assessing Officer also levied penalty under Section 271(1)(c) of the Act on the above said addition. In the meantime, the assessee challenged the addition made by the Assessing Officer in the quantum proceedings before the Ld. CIT(A) and then before the ITAT and the Tribunal, vide its order dated 28.02.2020 passed in ITA No. 2961/Mum/2018, deleted the addition made by the Assessing Officer in the quantum proceedings.

3. The assessee also challenged the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act by filing appeal before the Ld. CIT(A). It was brought to the notice of the Ld. CIT(A) that the addition on which penalty was levied has since been deleted by the Tribunal. Accordingly, the Ld. CIT(A) held that the penalty cannot stand by itself and accordingly, he cancelled the penalty. The Revenue has filed this appeal challenging the above said order of the Ld. CIT(A) contending that the decision rendered by the Tribunal in the quantum proceedings has been challenged by it in an appeal before the Hon'ble Bombay High Court.

4. It is an admitted fact that the addition towards Long Term Capital Gains has since been deleted by the Tribunal, vide its order referred to supra. The impugned penalty has been levied by the Assessing Officer on the above said addition only. Since the addition itself has been deleted, the Ld. CIT(A) has correctly held that the impugned penalty order shall not survive

and accordingly cancelled the penalty. Since the order so passed by the Ld. CIT(A) is in accordance with law, we do not find any reason to interfere with his order. Accordingly, we confirm the order passed by Ld CIT(A).

5. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th June, 2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 28th June, 2023

SSL

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai