

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No.272/PAN./2019
Assessment Year 2006-2007

The JCIT, Special Range, 2 nd Floor, Aayakar Bhawan, EDC Complex, Patto Plaza, Panaji – 403 001	vs.	M/s. V.M. Salgaocar & Brothers Pvt. Ltd., Salgaocar House, F.L. Gomes, Vasco Da Gama, Goa – 403 802 PAN AAACV5950B
(Appellant)		(Respondent)

ITA.No.284/PAN./2019
Assessment Year 2012-2013

M/s. V.M. Salgaocar & Brothers Pvt. Ltd., Salgaocar House, F.L. Gomes, Vasco Da Gama, Goa – 403 802 PAN AAACV5950B	vs.	The JCIT, Special Range, 2 nd Floor, Aayakar Bhawan, EDC Complex, Patto Plaza, Panaji – 403 001
(Appellant)		(Respondent)

For Assessee :	Shri Ketan Ved
For Revenue :	Shri Badrinath Yamaji Chavan

Date of Hearing :	09.08.2023
Date of Pronouncement :	10.08.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue ITA.No.272/ PAN./2019 [A.Y. 2006-2007]; and that filed by the assessee i.e., ITA.No.284/PAN./2019 [A.Y. 2012-2013], arise against the CIT(A), Panaji-1, Panaji's separate orders in case no.ITA.CIT(A),PNJ-1/10207/2014-15, dated 30.07.2019 and in case no.ITA.

CIT(A),PNJ-1/10944/2015-16, dated 27.09.2019, in proceedings under sec.271(1)(c) and under sec.143(3) of the Income Tax Act, 1961 (in short "the Act"); case-wise respectively.

Heard both the parties. Case files perused.

2. Coming to the Revenue's sole substantive grievance in its appeal ITA.No.272/ PAN./2019 that the CIT(A) has erred in law and on facts in deleting the section 271(1)(c) penalty of Rs.1,65,36,068/- imposed by the Assessing Officer, it emerges at the outset that the Assessing Officer's corresponding penalty show cause notice dated 08.12.2011 issued to the taxpayer had nowhere specified or struck-off the relevant limb as to whether the latter had concealed particulars of his income or furnished inaccurate particulars of such an income, as the case may be.

3. Faced with the situation, we quote hon'ble jurisdictional high court's recent Full Bench landmark decision in Mohd. Farhan A.Shaikh Vs. ACIT 434 ITR 1 (Bom) that the above stated failure on the Assessing Officer's part indeed vitiates the entire penal proceedings itself. We thus confirm the CIT(A)'s order in deleting the impugned penalty for this precise reason alone. Ordered accordingly.

4. This Revenue's appeal ITA.No.272/PAN./2019 is dismissed in above terms.

5. Coming to the assessee's appeal ITA.No.284/PAN./2019 for assessment year 2012-2013, we note that its sole substantive ground seeks to claim deduction representing secondary and higher education cess on income tax paid for the relevant previous year in light of Sesa Goa Ltd., vs. JCIT [2020] 423 ITR 426 (Bom.) as well as Chambal Fertilizers & Chemicals Ltd., vs., JCIT [2019] 107 taxmann.com 484 (Raj.). We are afraid that much water has flown down the stream as the legislature has now amended sec.40(ii) by way of inserting Explanation 3 vide Finance Act, 2022 with retrospective effect from 01.04.2005 making it clear that the clinching statutory expression "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. That being the case, we reject the assessee's vehement contentions in very terms. Its appeal ITA.No.284/PAN./2019 fails. Ordered accordingly.

6. No other ground or argument has been pressed before us.

7. To sum-up, both these Revenue's and assessee's appeals ITA.No.272/PAN./2019 and ITA.No.284/PAN./2019 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 10.08.2023.

Sd/-
[G.D. PADMAHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 10th August, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) Panaji-1, Aayakar Bhavan, Plot No.5, EDC Complex, Patto Plaza, Panaji – 403 001.
4.	The Pr. CIT, Panaji
5.	D.R. ITAT, Panaji Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.