

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 292/SRT/2023 (AY: 2012-13)

(Physical Hearing)

A.C.I.T., Circle-2(1)(1), Surat.	Vs.	Sejal Jewellers Private Limited, UG-4/5 Rangila Park, Ghod Dod Road, Surat-395007. PAN No. AAQCS 8686 P
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Mehul Shah, C.A.
Department represented by	Shri S.M. Keshkamat, CIT-DR
Date of Institution of Appeal	27/04/2023
Date of hearing	15/09/2023
Date of pronouncement	15/09/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 27/02/2023 for the Assessment Year (AY) 2012-13. The Revenue has raised following grounds of appeal:

- "1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 1,62,71,168/- levied u/s 271(1)(c) of the Act without appreciating the fact that the Revenue has challenged the decision of Hon'ble ITAT dated 28/02/2022 in the quantum appeal and further appeal has filed before the Hon'ble Gujarat High Court.*
- 2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the penalty Rs. 1,62,71,168/- without deciding the grounds of appeal on merits.*
- 3. On the facts and circumstances of the case and in law, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.*

4. *It is therefore prayed that the order of Id. CIT(A) may kindly be set aside that of the Assessing Officer be restored.*

‘5. *The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal.*”
2. Rival submissions of both the parties heard and record perused. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the addition on the basis of which the penalty was levied by Assessing Officer has been deleted by the Tribunal in ITA No. 435/Ahd/2017 dated 28/02/2022. The Id. CIT(A) deleted the penalty by following the decision of Tribunal, thus, the grounds of appeal raised by the revenue is covered in favour of assessee and against the revenue. The Id. AR of the assessee also filed copy of decision of Tribunal in assessee's appeal in quantum assessment in ITA No. 435/Ahd/2017 (supra).
3. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue supported the order of Assessing Officer and would submit that the order of the Tribunal may be a subject matter of appeal before the Hon'ble Jurisdictional High Court, therefore, he fully supports the order of Assessing Officer.
4. We have considered the submissions of both the parties and have perused the orders of the lower authorities carefully. We find that the Assessing Officer while passing the assessment order made addition of Rs. 5,01,81,940/- under Section 68 of the Act. On appeal in quantum

assessment before the Id. CIT(A), the addition was upheld. However, on further appeal before the Tribunal, the entire addition was deleted vide order dated 28/02/2023 passed in ITA No. 435/Ahd/2017. We find that the Id. CIT(A) while granting relief to the assessee followed the order of Tribunal in ITA No. 435/Ahd/2017 (supra). The Id. CIT-DR for the revenue raised plea that the revenue may have challenged the order of the Tribunal before the Hon'ble Jurisdictional High Court. At this stage, we do not find any merit in the contention of Id. CIT-DR for the revenue, as the addition in the quantum addition, which was the basis of the penalty has already been deleted by the Tribunal, therefore, order of penalty will not survive and we affirm the order of Id. CIT(A). In the result, grounds of appeal raised by revenue are dismissed.

5. In the result, this appeal of revenue is dismissed.

Order announced in open court on 15th September, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 15/09/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat