

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2417/MUM/2023
(Assessment Year: 2009-10)**

Karakal Varky Varghese,
Shed No. 5, Patherwadi Road,
Near Vishwakarma Garden,
Marve Road, Malad (West),
Mumbai – 400095
[PAN : AAAPV7565R]

..... **Appellant**

Income Tax Officer,
Ward - 30(2)(1), Mumbai,
BKC, Mumbai

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vimal Punmiya
For the Respondent/Department : Shri P.D. Chogule

Date

Conclusion of hearing : 16.10.2023
Pronouncement of order : 19.10.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 31/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order dated 28/03/2016, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') levying the penalty of INR 6,76,575/-.
2. The Appellant has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and law the learned CIT(A) erred in confirming penalty under Section 271(1)(c) of the Income Tax Act, 1961."

3. When the appeal was taken up for hearing, the Ld. counsel for the Assessee, at the outset, invited our attention to page No. 109 to 123 of the paper-book and submitted that the appeal preferred by the Assessee against the penalty order dated 28/03/2016, levying penalty of INR 6,76,575/- was allowed by the Commissioner of Income Tax (Appeals) - 41, Mumbai vide order, dated 31/11/2018. Therefore, the subsequent order, dated 31/05/2023, passed by the CIT(A) dismissing the same appeal of the Assessee is liable to be set aside.
4. On perusal of the common order, dated 31/11/2018, passed by the Commissioner of Income Tax (Appeals)-41, Mumbai disposing appeal No. CIT(A)-41/IT-48/16-17 pertaining to Assessment Year 2009-10 and CIT(A)-41/IT-50/16-17 pertaining to Assessment Year 2010-11, we find that the appeal preferred by the Assessee against the penalty order, dated 28/03/2016, pertaining to Assessment Year 2009-10 has been allowed in favour of the Assessee.
5. Further, on examining the order impugned by way of present appeal, we find that the CIT(A) has made reference to the same appeal preferred by the Assessee against the penalty order, dated 28/03/2016, in the first paragraph of the order impugned which reads as under:

"This appeal is preferred against the order dated 28.03.2016 passed U/s 271(1)(c) of I.T. Act, 1961 by the ITO, Ward-30(2)(1), Mumbai, for the A.Y. 2009-10. The appeal in this case has been filed on 22.04.2016, after service notice of demand dated 01.04.2016 as mentioned in form no. 35. Notices U/s 250 of the I.T. Act, 1961 were

issued to the appellant on 02.02.2021 and 24.04.2023.”

6. Thus, the common order, dated 31/11/2018, passed by the Commissioner of Income Tax (Appeals)-41, Mumbai as well as the subsequent order, dated 31/05/2023, passed by the CIT(A) dispose of the appeal preferred by the Assessee against the penalty order dated 28/03/2016 passed under Section 271(1)(c) of the Act for the Assessment Year 2009-10.
7. Since the appeal filed by the Assessee against the penalty, order dated 28/03/2016, pertaining to Assessment Year 2009-10 was already allowed by the Commissioner of Income Tax (Appeals)-41, Mumbai vide the common order, dated 31/11/2018, the subsequent order dated 31/05/2023 passed by CIT(A) is nullity in the eyes of law and is, therefore, quashed.
8. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 19.10.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.10.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai