

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2955/Del/2019  
Assessment Year: 2009-10

<b>DCIT Circle-21(1) New Delhi</b>	<b>Vs.</b>	<b>Resurgere Mines &amp; Minerals India Limited, 15 Morvi House, 28/30, Goa Street, Ballard Estate, Mumbai -400038 Maharashtra</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. P. N. Barnwal, CIT DR
Respondent by	None

Date of hearing:	08/11/2023
Date of Pronouncement:	17/11/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-7, New Delhi dated 29.01.2019 pertaining to A.Y.2009-10.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the penalty levied u/s. 271 (1)(c) of the Act.

(a) On the issue of disallowance of Rs.5,31,64,777/- made on account of valuation of stock.

(b) Disallowance of Rs.56,68,397 made u/s. 14A of the Act.

3. The roots for the levy of penalty lie in the assessment order dated 30.12.2016 framed u/s. 147 r.w.s 143 (3) of the Act. The quarrel travelled upto this Tribunal and this Tribunal in ITA No.6601/Del/2014 had considered the additions made by the AO.

4. The first addition was on account of valuation of stock. The relevant findings read as under :-

*“13. We have considered the rival submissions. It is not in dispute that there is a fall in export sales in assessment year under appeal substantially as compared to the preceding assessment year. The assessee rightly contended that in assessment year the export market of iron ore fines was in a bad shape, The assessee, therefore, rightly contended that Foreign buyers have insisted for best quality of iron ore fines and the stock of the assessee was not matching with the standards of the Foreign Buyers, therefore, the assessee could not sell the iron ore fines in domestic market and due to dust etc., the quantity of iron ore fine have deteriorated further. The explanation of assessee is supported by the fact that there is fall in export of iron ore fines in assessment year under appeal as compared to earlier years. However, the assessee did not produce books of account and other details and production cord because of the reasons that the Courier Company could not supply the same at Delhi*

*within a reasonable period. Since, on Ground No.4, the matter in issue have been restored to the file of assessing officer for examination by directing the assessee to produce books of account and other details, therefore, in our view, this issue also requires for reconsideration at the level of the assessing officer. Our views are also further strengthened by the fact that in preceding assessment year 2008-2009, on change of method of valuation of the closing stock, the assessing officer made addition of Rs.1,69,57,108/- which was given effect in assessment year under appeal by the assessing officer. However, this addition have been deleted by the Tribunal vide Order dated 22nd December 2017 and Order of the Tribunal is confirmed by the Honorable Delhi High Court. Therefore, the entire matter requires fresh reconsideration at the level of the assessing officer. We, accordingly, set aside the orders of the authorities below and restore this issue also to the file of assessing officer with a direction to the assessee to produce books of account, production details and other supporting material before assessing officer for his consideration. The assessing officer shall give reasonable, sufficient opportunity of being heard to the assessee before passing the order afresh. This Ground of appeal of assessee is allowed for statistical purposes.”*

5. Since this Tribunal has set aside the issue for fresh consideration. We deem it fit to restore the issue relating to the

levy of penalty to the files of the AO with a direction to decide the levy or otherwise of the penalty after deciding the quantum as per the directions of this Tribunal (supra).

6. The second addition was in respect of disallowance u/s. 14A of the Act which addition has been deleted by the Tribunal. The relevant findings read as under :-

*17.1. Considering the totality of the facts and circumstances of the case, it is clear that assessee made suo motu disallowance under section 14A, but, assessing officer did not record any satisfaction as to how the disallowance made by the assessee was unreasonable or unsatisfactory. In the absence of any satisfaction recorded under section 14A of the Income Tax Act, no disallowance could be made against assessee. Further, assessee has own sufficient funds to make investment, therefore, there is a presumption in favour of the assessee that assessee has used own funds to make investment in shares. Therefore, no addition under section 14A of the nature could be made against the assessee. We, accordingly, set aside the orders of the authorities below and delete the entire addition. This ground of appeal of assessee is allowed. No other point is argued or pressed.*

7. Since the addition has been deleted the penalty has no legs to stand. To this extent no penalty is leviable.

8. In the result, the appeal of the revenue is partly allowed for statistical purpose.

**Order pronounced in the open court on 17.11.2023.**

**Sd/-**

**(ASTHA CHANDRA)  
JUDICIAL MEMBER**

\*NEHA\*

Date:- .11.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI