

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 656/Ahd/2023

निर्धारण वर्ष/Assessment Year: 2010-11

The Deputy Commissioner of Income-Tax, Central Circle-2(3), Ahmedabad	Vs.	Midvalley Healthcare Services Pvt. Ltd., 51, 5th floor, New York Tower, S.G Road, Thaltej, Ahmedabad, Gujarat PAN : AAECM 7777 K
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	None	
Revenue by :	Shri Sudhendu Das, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 31.01.2024
घोषणा की तारीख /Date of Pronouncement: 07.02.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal has been preferred by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-12, Ahmedabad (hereinafter referred to as "CIT(A)") dated 12.06.2023 passed u/s 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year (AY) 2010-11.

2. The only effective ground raised in this appeal is whether the ld. CIT(A) is justified in deleting the penalty of Rs.4,30,72,029/- levied by the Assessing Officer u/s 271(1)(c) of the Act, by not appreciating that the Department is presently in appeal before the High Court of Gujarat against the order passed by Hon'ble ITAT deleting the quantum addition.

3. The brief facts of the case are that the assessee is a Private Limited Company carrying on the business of BPO services in the form of Medical Billing Services. The assessee filed its return of income for the year under consideration on 29.10.2010 declaring total income at Rs.1,12,10,580/- after claiming deduction of Rs.12,67,19,713/- u/s 10B of the Act. The case of the assessee was taken up for scrutiny assessment and accordingly notice u/s 143(2) was issued on 29.08.2011. Notices u/s 142(l) were also issued on 10.01.2012, 15.06.2012, 07.01.2013 & 17.01.2023. Thereafter, the assessment u/s 143(3) of the Act was completed by the Assessing Officer vide order dated 05.03.2013, making addition of Rs.12,67,19,713/- u/s 10B of the Act and a further disallowance of Rs.11,91,891/- towards expenses on STCG.

4. Aggrieved by the assessment order, assessee preferred appeal before the Id. CIT(A) who, while deleting the disallowance Rs.11,91,891/- towards the expenses on STCG, however confirmed the addition of Rs.12,67,19,713/- made by the Assessing Officer u/s 10B of the Act.

5. Subsequent to the Id. CIT(A)'s order confirming the addition Rs. 12,67,19,713/- under Section 10B of the Act, penalty u/s 271(1)(c) of the Act was completed by the Assessing Officer vide his order dated 03.03.2016, levying a penalty of Rs.4,30,72,029/- being the amount equivalent to the 100% of the tax sought to be evaded by the assessee. On further appeal before the Id. CIT(A), the impugned penalty order was cancelled by him vide order dated 12.06.2023. The Revenue, being aggrieved, is now in appeal before the Tribunal.

6. At the time of hearing before us, we observe that, in the quantum appeal, the Tribunal has deleted the quantum addition vide order dated

11.03.2021 in ITA No.1318/Ahd/2014. In the light of the order of the Tribunal in the quantum proceedings where the Tribunal deleted the addition, and in view of the Department's appeal to the High Court challenging the deletion of the said addition, it is pertinent to note that the High Court has neither overturned the Tribunal's order nor issued a stay order as of now. Accordingly, the Tribunal's decision retains its legal validity, and presently no addition stands. Consequently, the penalty imposed by the Department under Section 271(1)(c) of the Act on the impugned addition is legally unsustainable. We, therefore, uphold the order of the Id. CIT(A) deleting the impugned penalty levied u/s 271(1)(c) of the Act and dismiss the appeal filed by the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 07/02/2024 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 07/02/2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि,अधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad