

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1104/Bang/2023
Assessment Year : 2017-18

The Deputy Commissioner of Income Tax, Circle -2(1)(1), Bengaluru.	Vs.	M/s. Distribution Logistics Infrastructure Pvt. Ltd., Room No.234, 2 nd Floor, BMTC Building, Koramangala, Bengaluru – 560 095. PAN : AABCV 7123 P
APPELLANT		RESPONDENT

C.O.No.5/Bang/2024 (in ITA No.1104/Bang/2023)
Assessment Year : 2017-18

M/s. Distribution Logistics Infrastructure Pvt. Ltd., Bengaluru – 560 095. PAN : AABCV 7123 P	Vs.	The Deputy Commissioner of Income Tax, Circle -2(1)(1), Bengaluru.
CROSS OBJECTOR		RESPONDENT

Appellant by	:	Shri. Prakash Hegde, CA
Respondent by	:	Smt. Akta Jain B, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	29.02.2024
Date of Pronouncement	:	29.02.2024

ORDER

Per George George K, Vice President :

This appeal at the instance of the Revenue and Cross-objection (CO) by the assessee arise out of CIT(A)'s Order dated 27.10.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. Brief facts of the case are as follows:

Assessee is a company engaged in the business of handling road transport and rail transport. For the Assessment Year 2017-18, the return of income was filed on 03.11.2017 declaring loss of Rs.103,61,41,084/-. Assessee later filed revised return of income on 29.03.2019 declaring loss of Rs.131,55,85,786/-. Assessment was completed under section 143(3) of the Act vide order dated 12.12.2019 by making additions / disallowances amounting to Rs.6,93,88,705/-.

3. Thereafter, penalty proceedings under section 270A of the Act was initiated for the additions / disallowances made in the quantum assessment. During the course of the penalty proceedings, assessee was directed to explain why penalty under section 270A of the Act ought not to be imposed. In response to the same, assessee filed reply. However, the explanation offered by the assessee was not accepted by the AO. The AO imposed penalty of Rs.1,14,70,994/- under section 270A of the Act.

4. Aggrieved by the Order imposing penalty under section 270A of the Act, assessee filed appeal before the First Appellate Authority (FAA). The CIT(A), by following the judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. Sambhav Media Ltd., (2023) 33 taxmann.com 97 and Hon'ble Delhi High Court in the case of Devson Pvt. Ltd., Vs. CIT (2010) 329 ITR 483 (Delhi) deleted the penalty imposed under section 270A of the Act. The CIT(A) held that assessee had disclosed the material facts and details in the return of income and there is no reason to impose penalty under section 270A of the Act for under reporting of income.

5. Aggrieved by the order of the CIT(A), Revenue has filed the present appeal before the Tribunal. Assessee has also filed CO.

6. We have heard the learned DR and learned AR. We find that as against the quantum assessment, assessee had filed appeal before the FAA. The CIT(A) vide order dated 08.03.2023 had restored the major addition of Rs.5,72,68,685/- to the files of the AO for fresh consideration. It was submitted that subsequent to the remand by the CIT(A) to the AO in the quantum assessment, fresh assessment order is yet to be completed. Pursuant to the remand by the CIT(A), the assessment order is effaced. The above fact was not taken note by the CIT(A) while deleting the penalty imposed under section 270A of the Act. The Revenue is always at liberty to initiate fresh penalty proceedings subsequent to the Assessment Order being completed after the remand made by the CIT(A). Hence, the penalty order is premature and there is no necessity to adjudicate the Revenue's appeal at present. Therefore, we dismiss the appeal of the Revenue as well as the CO filed by the assessee. It is ordered accordingly.

7. In the result, Revenue's appeals and the COs of the assessee are dismissed.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(GEORGE GEORGE K)
Vice President

Bangalore,
Dated : 29.02.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.