

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.1120/Ahd/2023**  
**Asstt.Year :2014-15**

M/s.Theo Pharma Pvt. Ltd. 8919/C, Rakanpur Nr.Kosha Lab Taluka : Kalol Gandhinagar 382 721 PAN : AAAC 7013 P	Vs	ITO, Ward-4(1)(1) Ambawadi Ahmedabad.
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(Appellant)		(Responent)
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Assessee by :	Shri Jimit Shah, AR
Revenue by :	Shri Ketan Gajjar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 04/04/2024

घोषणा की तारीख /Date of Pronouncement: 17/04/2024

**आदेश/ORDER**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as Id.CIT(A)] under section 250(6)of the Income Tax Act, 1961 dated 26.9.2023, pertaining to Asst.Year 2014-15, vide which the Id.CIT(A) confirmed the action of the AO in imposing penalty of Rs.6,34,763/- under section 271(1)(c) of the Act.

2. Though the Registry has notified that the present appeal of the assessee is time barred by 28 days, and the assessee has not filed any application for condonation of the impugned delay in filing appeal before the Tribunal, considering the small period of delay and noting

that the appeal is otherwise to be remanded back to the first appellate authority for adjudication to be decided in alignment with the quantum appeal on the issue, which is pending before the first appellate authority, I condone the delay.

3. At the outset, the ld.counsel for the assessee submitted that ld.NFAC has adjudicated the issue of penalty under section 271(1)(c) of the Act *ex parte*, without duly considering the addition on which the penalty was imposed, i.e. the quantum proceedings are pending before the NFAC/CIT(A). Therefore, the quantum proceedings being *subjudiced*, the impugned penalty is untenable, and the same be decided by the first appellate authority depending upon the outcome in the quantum proceedings. The ld.counsel for the assessee has filed a copy of Form No.35 filed in relation to the quantum proceedings before the ld.first appellate authority, and submitted that the quantum proceedings are yet to reach a conclusion.

4. The ld.DR, however, did not contest the factual proposition on the issue advanced by the ld.counsel for the assessee before us.

5. Heard both the parties, and gone through the orders of the Revenue authorities and material available on record. Undoubtedly, I find that the impugned penalty was imposed *ex parte* under section 271(1)(c) of the Act by the ld.CIT(A) before adjudicating first the underlying quantum proceedings pending before it. The assessee has also filed a copy of form no.35 filed before the lower authorities in the quantum proceedings. Given the pending nature of the quantum proceedings, a decision on the validity of penalty imposed under section 271(1)(c) of the Act, lacks merit and should be deferred for

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adjudication by the first appellate authority, to be decided based on the outcome of quantum proceedings. I order accordingly.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the Court on 17<sup>th</sup> April, 2024 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 17/04/2024