

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4160/M/2023
Assessment Year: 2012-13**

M/s. Guru Aashish Texfab Limited, Flat No.04, 2/B, Jaihind Estate, 1 st Floor, Dr. A.M. Road, Bhuleshwar, Mumbai – 400 002 PAN: AACCG1470H	Vs.	DCIT, Central Circle 4(3), 1921, Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri S.L. Jain, A.R.
Revenue by : Shri Manoj Kumar Singh, Sr. A.R.

Date of Hearing : 25 . 04. 2024
Date of Pronouncement : 30 . 04. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 17.10.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, the Assessing Officer (AO), vide assessment order dated 31.03.2015 u/s 143(3) read with 153C of the Act, made the addition of Rs.3,46,00,000/- under section 68 of the Act on account of alleged accommodation entries/non-genuine business activities and added back the same to the total income of the assessee. Simultaneously, the AO also initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The assessee challenged the said addition before the Ld. CIT(A), however, could not succeed as the then Ld. CIT (A) vide order dated 06-12-2016 upheld the said addition. Subsequently vide order dated 09-06-2021 passed by the Hon'ble Co-ordinate Bench of the Tribunal, the case of the assessee was remanded to the AO for de-novo adjudication. By following the directions of the Tribunal, the AO passed the order under section 143(3) read with section 254 of the Act and assessed the income of the assessee to the tune of Rs.2,48,98,522/- as declared by the assessee, which goes to show that addition of Rs.3,46,00,000/- as made by the AO in the original assessment order, in fact, diluted and ultimately deleted.

3. However, it appears from the order dated 29.09.2017 the AO, vide penalty order dated 29.09.2017 under section 271(1)(c) of the Act, levied a penalty to the tune of Rs.1,17,60,540/- at the rate of 100% of the tax sought to be evaded on the amount of addition of Rs.3,46,00,000/-. As the addition, as on today, does not exist, therefore the penalty also does not survive. Even otherwise, we observe that the penalty to the tune of Rs.1,17,60,540/- was levied by the AO vide order dated 29.09.2017, against which the assessee has preferred first appeal before the Ld. Commissioner, who vide impugned order dated 17.10.2023, deleted the penalty amount of Rs.16,99,500/- whereas in fact the penalty was levied to the tune of

Rs. 1,17,60,540/- which was subject matter in entirety before the Ld. Commissioner. It appears from column No.7 of Form no.35, as submitted by the Ld. A.R., that may be on bonafide mistake or inadvertently the amount of penalty, has been mentioned as Rs.16,99,500/- instead of Rs. 1,17,60,540/- and therefore, it is probable that the Ld. Commissioner instead of going to the impugned penalty order before him, in fact, relied on form No.35 and in the impugned order quoted the deletion of penalty to the tune of Rs.16,99,500/-.

4. The Ld. D.R. did not refute the aforesaid factual position and probable claim of the Assessee.

5. Hence considering the peculiar facts and circumstances of the case in totality, as the penalty to the tune of Rs.1,17,60,540/- was under challenge before the Ld. Commissioner, who in fact, deleted the entire penalty amount but inadvertently shown the amount as Rs.16,99,500/- may be oversight or inadvertence. It is also a fact, as not denied by the Ld. D.R., that the addition/foundation of the case on the basis of which the penalty was levied, in fact, lost its existence, as the AO ultimately accepted the income declared by the assessee and not made any addition. Consequently, the penalty in any sense is un-sustainable. Hence, we do not find any hesitation to delete the same. Thus, the penalty of Rs. 1,17,60,540/- is deleted in entirety.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.