

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 347/MUM/2024 (A.Y: 2012-13)

DCIT-1(1)(1) 579, Aaykar Bhavan, M.K Road Mumbai-400020	v.	Ashajyot Mercantile Private Limited Flat No 2, Block A First Floor Aidun Building John Crasto Lane J. S. Seth Road Dhobi Talao, Kalbadevi H.O Mumbai Mumbai, Maharashtra 400002 PAN: AAICA2437N
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Madhur Agrawal
Department Represented by	:	Shri Mirza Azhar Beig
Date of conclusion of Hearing	:	22.05.2024
Date of Pronouncement	:	22.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against order dated 30.11.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y. 2012-13.

2. The solitary grievance of the revenue is that the Ld. CIT(A) erred in deleting the Penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short "Act") amounting to ₹.1,95,46,595/-.

3. The roots for the levy of Penalty lie in the assessment order dated 05.02.2015 framed under section 143(3) of the Act by which returned loss of ₹.7,85,46,031/- was assessed at loss of ₹.2,10,39,130/-. The loss was reduced by making an addition of ₹.5,75,06,899/-. The addition was deleted by the Ld. CIT(A) but the appeal of the revenue before this Tribunal was allowed since the assessee did not press the appeal.

4. The additions made in the assessment under section 143(3) of the Act are as under:

1	<i>Labors Dues</i>	<i>Rs.2,17,76,881</i>
2.	<i>ESIC Ppayments</i>	<i>RS.23,72,812</i>
3.	<i>EPF Payments</i>	<i>Rs. 2,95,96,150</i>
4.	<i>Electricity Dues</i>	<i>Rs. 30,00,000</i>
5.	<i>Land Compensation</i>	<i>RS.,716,056</i>

5. The underlying facts are that the assessee had acquired certain land from IFCI which had acquired these lands under SARFAESI Act from M/s. Punjab Fibers Ltd., Ropar Unit. The assessee was under

impression that the said land would be free of encumbrances which was not true and the assessee had to bear costs of pending labour / Provident Fund dues as mentioned hereinabove. These expenses were claimed as revenue expenditure which was disallowed by the Assessing Officer. Subsequently allowed by the Ld. CIT(A) and because the assessee was not going to lose anything if these expenses are treated as capital expenditure it did not contest the appeal of the revenue before this Tribunal.

6. In our considered opinion when the expenses are otherwise genuine and allowable but disallowed only due to dispute with respect to year of allowability of the claim then in such circumstances it is not a fit case for the levy of Penalty under section 271(1)(c) of the Act.

7. A perusal of the orders of the authorities below show that neither in the assessment order nor the Penalty order have alleged any misrepresentation / illegal claim or bogus expenses on part of the assessee. All the payments pertain to the statutory dues. If these statutory expenses are taken to be part of stock-in-trade and were to be debited on sale of such stock, even then these expenses were to be allowed. If these statutory expenses are considered as capital

expenditure, then the assessee would be eligible to claim it as and when the capital assets are sold. Therefore, the only dispute was the year in which these expenses should have been allowed. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the Ld. CIT(A). Appeal of the revenue is accordingly dismissed.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 22.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum