

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 3425/MUM/2023
(Assessment Year : 2012-13)**

ITO-19(3)(1) Piramal Chamber, Mumbai 400012.	Vs.	Rajendra L Jain 9 th Floor, Novelty Chambers, M.S.Road, Grant Road(E), Mumbai 400007.
PAN/GIR No. AAIPJ2441G		
(Appellant)	..	(Respondent)

Assessee by	Shri. Rajesh C. Shah (CA)
Revenue by	Smt. Mahita Nair (SR.DR.)
Date of Hearing	07/05/2024
Date of Pronouncement	03/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred by the revenue against the impugned order dated 01.08.2023 passed in appeal no. CIT(A)-47, MUM/10030/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2012-13, wherein

learned CIT(A) has deleted the penalty of Rs. 63,13,321/- imposed upon assessee u/s. 271(1)(C) of the Act, vide penalty order dated 30.03.2019.

2. The brief facts related to the appeal state that assessee is an individual and filed original return of income on 29.09.2012 declaring total income at Rs. 14,85,000/-. The return of income was processed u/s. 143(1) of the Act. Subsequently, a search was conducted on Shri Bhanwarlal Jain group by DGIT(Inv.) Mumbai on 3.10.2013 involved in issuance of fictitious sales bills and accommodation entries of non genuine unsecured loans. The premises of one of the concerns reportedly managed and controlled by Shri Bhanwarlal Jain and Shri Rajesh Bhanwarlal namely M/s Nakoda Floor Mills Pvt. Ltd. having registered office at 9th Floor Novelty Chambers, M.S.Road, Mumbai 400001 was found to be inhabited by Shri Rajendra Ladakchand Jain/assessee, who is one of the directors with Shri Bhawarlal Jain and Shri Rajesh Bhanwarlal Jain as two other directors. This fact was confirmed by the assessee in his statement u/s. 131 of the Act. In response to the notices issued and served upon the assessee u/s. 153C of the Act dated 21.05.2015, Shri Rajesh Shah, CA

represented the assessee before Assessing Officer. Assessing Officer found that assessee failed to file and disclose correct particulars of income under the Act. The order u/s. 153C r.w.s 143(3) of the Act was completed on 31.03.2016, assessing total income of Rs. 4,18,58,139/-. Assessee did not respond to the penalty notices u/s 274 r.w.s 271(1)(C) of the Act. Hence, the penalty of Rs. 63,13,321/- (@ 100% tax evasion, was imposed u/s. 271(1)(C) of the Act by Assessing Officer/ (DCIT Central Circle-1(3)Mumbai.

3. The assessee filed an appeal before learned CIT(A) against the penalty order dated 30.03.2019. Learned CIT(A) found that the Tribunal had already deleted the quantum addition, hence the penalty was deleted.
4. The assessee has approached this tribunal on the following grounds:

“1. Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the penalty u/s 271(1)(c) of the Act, without considering the fact the additions were made by the Assessing Officer on relying the report of Investigation Wing, Mumbai which is a creditable agency of the Income-Tax Department?

2. Whether on the facts and circumstances of the case and in law the CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the Act, ignoring the fact that the survey proceedings, a statement on oath was recorded u/s 131 of the Act and assessee has admitted that a blue coloured diary belongs to him and confirmed that it contains details of cash load given & received back in his personal capacity on different dates from various parties and the same is not reflected in this regular books of accounts?

3. Whether on the facts and circumstances of the case and in

law the CIT(A) has erred in considering the decision in the case MAK DATE P. Ltd Vs CIT Supreme Court)-CIVIL Application No. 9772(2013) (Arising out of SLP(Civil) No. 18389 of 20133, wherein it was held that it is statutory duty of the assessee to declare its true income in the return of income filed by it from year to year and if the assessee had concealed true particulars of income than, the assessee is hable for penalty proceedings u/s 271(1)(c) r.w.s 274 of the Act ?”

5. Assessee appeared in response to the notice issued by this tribunal and participated in the proceedings.
6. We have pursued the material on record & heard, Ld. Representatives for both the parties.
7. Learned DR for the revenue has supported the penalty order, submitting that the assessee had concealed the true particulars of income, further submitting to sustain the penalty order and to set aside impugned order passed by learned CIT(A).
8. Learned AR has submitted that Hon'ble 'D' Bench of ITAT Mumbai Bench in ITA no. 2827/MUM/2018 for the A.Y. 2012-13 r/w ITA no. 2825/MUM/2018 for the A.Y. 2010-11, vide common order dated 26.07.2019, has quashed the assessment. Further referred the order dated 17.05.2022 passed by the Delhi Bench of ITAT in ITA NO. 3363/DEL/2018 Heritage Infracon Pvt. Ltd. Vs. DCIT, Central circle, Karnal for A.Y. 2006-07, wherein Tribunal allowed assessee's appeal and set aside penalty order on the ground that the said assessment order was quashed by

coordinate bench of the Tribunal in ITA no. 1919/MUM/2015 for the A.Y. 2006–07. Ld. AR has further submitted that revenue's appeal be dismissed and the impugned order be confirmed.

9. It is pertinent to mention that though the copy of aforesaid order dated 26.07.2019 passed in the ITA NO. 2825/MUM/2018, quashing the assessment related to the impugned penalty has not been filed, however the fact that the concerned assessment order, has been quashed by this Tribunal in above referred appeal, has not been disputed by the Ld DR. In this view of the matter, since the foundation of the penalty has collapsed, the penalty order does not survive. All factual grounds taken by the revenue in this appeal gets diluted accordingly. We accordingly hold that learned CIT(A) was right in deleting the penalty since the tribunal has already deleted the quantum addition. The appeal is thus liable to be dismissed.

10. In the result, the appeal of the revenue stands dismissed. The impugned order dated 01.08.2023 passed by learned CIT(A), deleting penalty, stands confirmed.

Order pronounced on 03.06.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 03/06/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL 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, Mumbai