

**THE INCOME TAX APPELLATE TRIBUNAL,  
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 258/KOL/2024  
Assessment Year: 2011-2012**

***Swatipushp Dealers Pvt. Ltd.,.....Appellant  
(since merged with Snowtemp Commercial Pvt. Ltd.)  
101, 1<sup>st</sup> Floor, 18, Prince Anwar Shah Road,  
Kolkata-700033  
[PAN:AAPCS5069P]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-11(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Abhishak Bansal, A.R., appeared on behalf of the  
assessee*

*Shri Loviesh Shelley, JCIT, D.R. appeared on behalf of  
the Revenue*

**Date of concluding the hearing : May 30, 2024  
Date of pronouncing the order : June 11, 2024**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 5<sup>th</sup> February, 2024 passed for assessment year 2011-12.

2. The assessee has taken five grounds of appeal, out of which Grounds No. 1, 2, 4 & 5 are general in nature, which do not call for recording of any specific finding.

3. In Ground No. 3, the assessee has pleaded that ld. CIT(Appeals) has erred in ignoring the assessment order dated 30.12.2019 passed under section 143(3)/254/263/143(3) in confirming the penalty imposed by the ld. Assessing Officer under section 271(1)(c) of the Income Tax Act.

4. Brief facts of the case are that the assessee has filed its return of income electronically on 18.09.2012 showing a returned loss of Rs.(-)4,615/-. A scrutiny assessment was passed on 30.01.2014 at an assessed loss of Rs.3,666/-. The ld. Pr. CIT took cognizance under section 263 of the Income Tax Act and thereby vide his order dated 25.03.2016, the impugned assessment order passed on 30.01.2014 under section 143(3) was set aside.

5. According to the ld. Assessing Officer, in pursuance of this order, a fresh assessment order was passed on 12.09.2016. It appears that on the basis of this order, a penalty under section 271(1)(c) was imposed by the ld. Assessing Officer vide his order dated 14.06.2018. The ld. Assessing Officer has imposed a penalty of Rs.2,95,95,575/-.

6. Dissatisfied with this order, an appeal was filed before the Id. CIT(Appeals) on 03.07.2018. This appeal has been decided by the Id. CIT(Appeals) vide impugned order dated 05.02.2024.

7. It emerges out that before finalizing of an assessment order in pursuance to 263 order an appeal was filed before the ITAT bearing ITA No. 1144/KOL/2017. The appeal of the assessee was partly allowed for statistical purposes. The Tribunal has held that since hearing was not provided to the assessee, therefore, 263 order of the Id. Pr. CIT is modified to the extent that instead of finalization of the assessment, it is restored to the Id. Assessing Officer for passing of a *de novo* assessment. The concluding paragraph of the order passed under section 263 reads as under:-

*“Further, despite opportunity having been granted as pointed out above the assessee failed to establish genuineness of source of capital.*

*In consideration of the above facts, I hold that the sum of Rs.8,91,00,000/- (Rs.9,90,000/- being share capital and Rs.8,81,10,000/- being share premium) received by the assessee during the period under consideration is the assessee's own income and is assessed as income of the assessee for the instant assessment year. The assessed income as per assessment order dt.30.01.2014 stands enhanced accordingly.*

*The A.O. is directed to pass consequential order giving effect to this order.*

*Penalty proceeding u/s. 271(l)(c) initiated separately for concealed unaccounted income of Rs. 8,91,00,000/-.*

*Sd/-  
(DEVENDRA NATH MISHRA)  
Pr. Commissioner of Income Tax-4, Kolkata*

This finding has been vacated by the Tribunal holding that proceedings are restored to the ld. Assessing Officer for redetermination of the income.

8. While giving effect to the order of the Tribunal, the ld. Assessing Officer has passed the assessment order on 30.12.2019 and he did not make any addition. The income of the assessee has determined according to the original assessment order dated 30.01.2014 stood as it is. Copy of this assessment order is available on page 43 of the record. For completeness of the facts and circumstances, we deem it appropriate to take note of this order, which reads as under:-

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Income Tax Department

ITNS-65

1.	Name of the Assessee	: M/s Swatipushp Dealers Pvt. Ltd. 18, Prince Anwar Shah Road, Kolkata-700033.
2.	PAN	: AAPCS5069P
3.	District/Ward/Circle	: I.T.O., Ward-11(2), Kolkata.
4.	Status	: Company
5.	Assessment Year	: 2011-12
6.	Whether resident/Resident but ordinarily resident/non-resident	: Resident
7.	Method of Accounting	: Mercantile
8.	Previous Year	: 2010-11
9.	Nature of Business	: Investment in Shares & Securities
10.	Date of hearing	: As per separate sheet.
11.	Date of Order	: 30/12/2016
12.	Section and sub-section under which the Assessment is made	: 143(3) <del>254</del> 143(3) of the I.T.Act,1961.

30/12

Assessment Order

The assessee company e-filed its return of income on 18.09.2012 showing a returned Loss of Rs. (-) 4,615/-. The return was processed u/s 143(1) of the I T Act, 1961. The case was later selected for scrutiny under CASS and the assessment was completed u/s 143(3) on 30.01.2014 at an assessed loss of Rs. (-) 3,666/-.

Subsequently, on 25.03.2016 the Ld. PCIT-4, Kolkata passed an order u/s 263. Giving effect to the direction contained in the order, the income of the assessee was finally assessed at Rs. 12/09/2016.

Against the order passed by the Ld. PCIT-4, Kolkata, the assessee preferred an appeal before the Hon'ble ITAT, Kolkata vide I.T.A. No. 1144/Kol/2017 wherein the Hon'ble ITAT vide its order pronounced on 17/05/2019 set aside the order of the Ld. PCIT with direction to the undersigned for denovo assessment after providing the assessee sufficient opportunity of being heard.

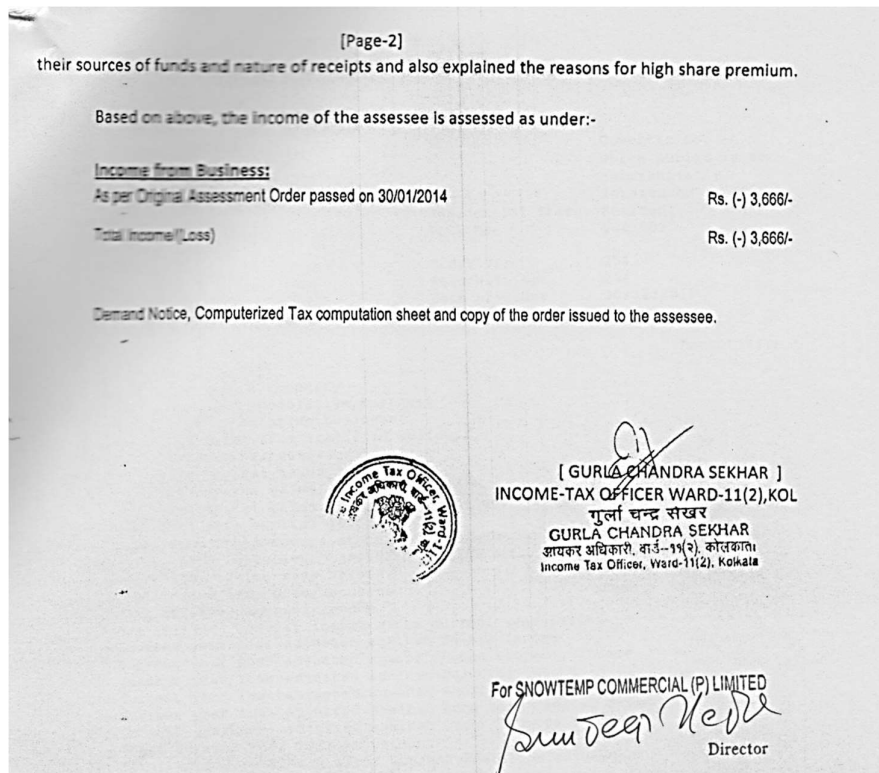
Accordingly, notice u/s 142(1) was issued and served upon the assessee. In response to the same Shri Vinay Kumar Gupta, FCA, A/R of the assessee appeared from time to time and filed the details and documents as called for including the details of share capital and premium raised during the year and produced books of account and supporting evidences which were examined.

In order to verify the identity and creditworthiness of the share applicants and genuineness of the transactions summons u/s 131 and 133(6) were issued to the share applicants which were duly complied with wherein the share applicants confirmed the transactions with the assessee and explain

[Contd. on Page-2]

For SNOWTEMP COMMERCIAL (P) LIMITED

*Sandeep Mehta*  
Director



9. Sub-clause (iii) of section 271(1)(c) reads as under:-

“Failure to furnish returns, comply with notices, concealment of income, etc.

271:- (1) If the Assessing Officer or the Joint Commissioner or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(a).....

(b).....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(d).....

(i).....

(ii).....

*(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which has not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits”.*

10. A perusal of sub-clause (iii) of section 271(1)(c) would indicate that penalty would be equivalent or to the extent of three times of taxes, if any, payable by an assessee on the addition made to his income could be charged under this sub-clause. In the present case, no addition has attained finality ultimately. Income of the assessee has been determined equivalent to the amount disclosed by it, which is in a negative figure. Neither any losses have been disallowed nor any addition has been made, therefore, the very foundation to compute the penalty is extinguished. In this situation, no penalty is imposable upon the assessee. It is pertinent to note that Id. CIT(Appeals) failed to take note of all these facts. The assessment order was passed long back in 2019. Unnecessary this appeal was kept pending upto 2024. Accordingly, we allow the appeal of the assessee and delete the penalty.

**11. In view of the above, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 11/06/2024.

Sd/-

Sd/-

**(Manish Borad)**  
**Accountant Member**

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 11<sup>th</sup> day of June, 2024***

*Copies to :(1 Swatipushp Dealers Pvt. Ltd.,  
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*(2) Income Tax Officer,  
Ward-11(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC), Delhi;*

*(4) CIT- , Kolkata*

*(5) The Departmental Representative;*

*(6) Guard File  
TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***