

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA No.811/PUN/2024
Assessment Year : 2010-11**

M/s. Sarovar Enterprises Plot No.114, Sai Pooja, MCCH Society, Panvel – 410206	Vs.	ITO, Ward-2, Panvel
PAN : AAWFS9785N		
(Appellant)		(Respondent)

Assessee by : Shri Hari Krishan
Department by : Shri Sourabh Nayak, Addl.CIT
Date of hearing : 12-06-2024
Date of pronouncement : 12-06-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 02.05.2023 of the CIT(A) / NFAC, Delhi relating to assessment year 2010-11.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of CIT(A) / NFAC confirming the penalty of Rs.2,33,750/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. There is a delay of 293 days in filing of this appeal before the Tribunal, for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit and after hearing both the sides, the delay in filing of the appeal by the assessee is condoned and the appeal is admitted for adjudication.

4. The Ld. Counsel for the assessee at the outset submitted that the Tribunal vide ITA No.2509/PUN/2016 order dated 21.03.2018 has deleted the addition made by the Assessing Officer which is the basis for levy of penalty and therefore, the penalty does not survive. The Ld. Counsel for the assessee accordingly submitted that the penalty levied by the Assessing Officer and confirmed by the CIT(A) / NFAC should be deleted.

5. The Ld. DR fairly conceded that since the Tribunal has already deleted the addition, therefore, penalty does not survive.

6. After hearing both the sides, we find the various additions made by the Assessing Officer which are the basis for levy of penalty u/s 271(1)(c) of the Act stands deleted by the Tribunal vide ITA No.2509/PUN/2016 order dated 21.03.2018 for assessment year 2010-11. Since the additions have already been deleted by the Tribunal, therefore, the penalty does not survive. We, therefore, set

aside the order of CIT(A) / NFAC and direct the Assessing Officer to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the open Court on 12th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12th June, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	12.06.2024		Sr. PS/PS
2	Draft placed before author	12.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			