

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.262/Kol/2024**  
**Assessment Year: 2016-17**

**Ambereen Islam.....Appellant**  
**71, Princep Street,**  
**Chandni Chawk,**  
**Kolkata – 700072.**  
**[PAN: AAKPI3448Q]**

**vs.**

**ITO, Ward-40(1), Kolkata..... Respondent**

**Appearances by:**

Shri Manoj Kataruka, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 28, 2024

Date of pronouncing the order : July 11, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 02.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the levy/confirmation of penalty u/s 271(1)(c) of the Act.

3. At the outset, the ld. counsel for the assessee has submitted that the Assessing Officer during the assessment proceedings noted that the assessee had raised a claim of duty draw back to the tune of Rs.3,67,376/-, whereas, the assessee had disclosed a sum of Rs.69,525/- under the head 'duty draw back'. On being asked to explain in this respect, the assessee explained that the balance amount of Rs.2,97,851/- was not received during the year. That the amount of

duty draw back was disclosed on actual receipt basis. However, the Assessing Officer was of the view that since the assessee had been following mercantile system of accounting, therefore, the assessee was supposed to include all the amount that had accrued to the assessee on account of duty draw back. He, therefore, made the addition of the balance amount. He also initiated penalty proceedings u/s 271(1)(c) of the Act and held that the assessee had concealed the particulars of the income in respect of the remaining amount of duty draw back and imposed the impugned penalty. Further, the Assessing Officer also levied minor penalty on account of claim of inflated liability to the tune of Rs.1005/-. The ld. counsel has further submitted that the assessee preferred appeal before the ld. CIT(A) relating to quantum additions as well as assailing the impugned penalty levied u/s 271(1)(c) of the Act. That the ld. CIT(A), however, vide impugned order confirmed the penalty, whereas, the appeal against the quantum additions is still pending before the ld. CIT(A). The ld. counsel has further submitted that the assessee has a fair case on merits as the assessee had duly disclosed the remaining amount of duty draw back in subsequent years as and when received. The ld. Counsel has submitted that if the quantum additions stood deleted by the ld. CIT(A), then the impugned penalty would not have any legs to stand. The ld. counsel, therefore, has submitted that the matter relating to the levy of impugned penalty be restored to the file of the ld. CIT(A) so that the same may be decided along with the quantum appeal of the assessee. The ld. counsel in this respect has mentioned that the quantum appeal in this respect has been numbered as Appeal No.CIT(A), Kolkata-12/10068/2019-20.

4. After hearing the rival submissions of both the parties, we are of the view that it will be in the interests of justice, if the impugned matter regarding the levy of penalty is restored to the file of the ld. CIT(A) with

a direction to decide the same along with appeal of the assessee relating to quantum additions. It is made clear that our observations made in this order will not have any bearing on merits of the case or on the appeal relating to quantum addition pending before the CIT(A), which will be decided by the ld. CIT(A) on merits of the case.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

***Kolkata, the 11<sup>th</sup> July, 2024.***

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 11.07.2024.

RS

*Copy of the order forwarded to:*

1. Ambereen Islam
2. ITO, Ward-40(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches