

आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 2531/दिल्ली/2024 (नि. व. 2015-16)
ITA No.2531/DEL/2024 (A.Y.2015-16)

Voith Paper Gmbh & Co. KG,
(Now merged with J.M Voith SE & Co. KG),
C/o Mohinder Puri & Co. CAs
1A-D, Vandhna, 11 Tolstoy Marg, New Delhi 110001
PAN: AADCV-4876-D

..... अपीलार्थी/ Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
International Taxation, Circle -2(1)(2),
New Delhi 110002

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Anuj Mathur, and
Ankit Nanda, Chartered Accountant
प्रतिवादीद्वारा/ Respondent by : Shri Vijay B Vasanta, CIT-DR
सुनवाई की तिथि/ Date of hearing : 21/08/2024
घोषणा की तिथि/ Date of pronouncement : 21/08/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax, (Appeal) Delhi-43 (hereinafter referred to as 'the CIT(A)') dated 27.03.2024, for Assessment Year 2015-16, upholding levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Shri Anuj Mathur, appearing on behalf of the assessee submitted at the outset that in quantum proceedings for AY 2015-16, the Tribunal in appeal by the assessee ITA No. 4862/Del/2019 vide order dated 23.04.2024 has restored the issue to Assessing Officer (AO) for *denovo* adjudication. Since, in the quantum proceedings the Tribunal has *set aside* the assessment order, the penalty proceedings arising from said order will not survive. The Id. AR placed on record, order of the Tribunal in ITA no. 4862/Del/2019 (*supra*).

3. Shri Vijay B Vasanta representing the department fairly stated that in quantum proceedings for AY 2015-16. The Tribunal has restored the issue back to the file of AO for *denovo* assessment.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. In the present appeal, the assessee has assailed levy of penalty u/s. 271(1) (c) of the Act. The assessee has placed on record order of the Tribunal in quantum proceedings for the impugned AY in the case of assessee. The co-ordinate Bench has restored the issues in appeal to the file of AO for *denovo* adjudication. A perusal of the assessment order reveals that AO has made addition of Rs. 16,72,21,072/- on account of profit from offshore supply of the assessee attributable to its PE. The AO while making addition also initiated penalty proceedings u/s. 271(1)(c) of the Act. In first appeal, the CIT(A) allowed part relief to the assessee. The profit attribution to the PE at the rate of 10% was reduced to 5% by the CIT(A). Still, aggrieved the assessee carried the issue in appeal before the Tribunal in ITA No. 4862/Del/2019 (*supra*). The Tribunal held, that the reasoning given by Departmental Authorities in adopting estimated profit rate is based on

conjectures and surmises, hence, rejected the estimations. The Tribunal restored the issue to AO for *denovo* adjudication. Since, substratum for levy of penalty has eroded, the penalty levied u/s. 271(1)(c) of the Act does not survive.

5. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Wednesday the 21st day of August, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 21/08/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI