

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3457/Mum/2024  
(Assessment Year :2009-10)**

**ITA No.3458/Mum/2024  
(Assessment Year :2010-11)**

**ITA No.3459/Mum/2024  
(Assessment Year :2011-12)**

**&**

**ITA No.3460/Mum/2024  
(Assessment Year :2012-13)**

|   |     |   |
|---|-----|---|
| ACIT-2(3)(1)<br>552, Aayakar Bhavan,<br>M.K. Road, Churchgate<br>Mumbai- 400020 | Vs. | N R Agarwal Industries<br>502-A/501-B, Fortune<br>Terraces, 5 <sup>th</sup> Floor,<br>Opp. City Mall, New<br>link Road, Andheri (W),<br>Mumbai 400053 |
| <b>PAN/GIR No.AAACN7721K</b>  |     |   |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>   |

|                              |                    |
|------------------------------|--------------------|
| Assessee by                  | Shri. Biren Shah   |
| Revenue by                   | Shri. Sunil Shinde |
| <b>Date of Hearing</b>       | <b>14/08/2024</b>  |
| <b>Date of Pronouncement</b> | <b>22/08/2024</b>  |

**आदेश / ORDER**

**PER BENCH:**

The aforesaid appeals have been filed by the revenue against the order dated 12.01.2024 passed by CIT (A)-11 Ahmedabad in relation to the penalty proceedings u/ 271(1)(c) of the Act. In all the years, revenue is aggrieved by deletion of penalty by the CIT (A) who has deleted the penalty on the ground that the Tribunal in the quantum proceedings has deleted the additions on which penalty has been levied. For sake of ready reference the relevant findings of the CIT(A) for AY 2009-10 are reproduced as under:-

*5. The ground of appeal no 2 is against the action of the AO in levying of penalty under section 271(1)(c) of the Act for Rs. 2,08,28,056/-.*

*5.1 In this case, the AO had levied penalty u/s 271(1)(c) for concealment of income on the following additions made in case of appellant:-*

| <i>Sr. No</i> | <i>Particulars</i>  | <i>Amount (in Rs.)</i> |
|---------------|---|------------------------|
| <i>(i)</i>    | <i>Enhancement made by CIT(A) in Unit-II and Unit-III</i> | <i>4,15,89,737</i>     |
| <i>(ii)</i>   | <i>Disallowance u/s 80IA</i>                              | <i>1,95,87,102</i>     |
| <i>(iii)</i>  | <i>Disallowance u/s 14A</i>                               | <i>1,00,175</i>        |
|               | <i>Total</i>  | <i>6,12,77,014</i>     |
|               | <i>Penalty levied @33.90%</i>                             | <i>2,08,28,056</i>     |

*5.2 The appellant has argued that Hon'ble ITAT, Ahmedabad vide order dated 05.07.2021 has deleted additions of account of*

*enhancement made by the Id. CIT(A) for Rs.4,15,89,737/- and 801A for Rs.1,95,87,102/-. The relevant findings of Hon'ble ITAT are reproduced in the submission filed by the appellant which is reproduced herein above. With respect to penalty levied on addition made u/s. 14A, the appellant has argued that penalty u/s. 14A cannot be levied in view of various judicial pronouncement which are referred at para 4.2 of appellant's submission which is reproduced herein above.*

*5.3 On overall consideration of facts, penalty order, order of the Hon'ble ITAT and submissions filed by the appellant, it is observed that the Hon'ble ITAT has deleted entire addition made on account of enhancement by the Id. CIT(A) as well as deduction u/s.801A of the Act. The operative part of such order is already reproduced in appellant's submission referred supra. According to provisions of section 271(1)(c), a penalty is to be computed either equivalent to the taxes on the additions made to the declared income or three times of taxes on such addition. In the present case, the very additions made by the AO to returned income has been deleted by the Hon'ble ITAT referred supra, hence consequential penalty u/s.271(1)(c) does not survive. Thus, penalty u/s 271(1)(c) levied by the AO on addition of enhancement made by CIT(A) for Rs.4,15,89,737/- and 801A for Rs.1,95,87,102/- is deleted.*

*5.4 With respect to penalty levied on addition made u/s.14A for Rs.1,00,175/-, it is observed that penalty u/s.271(1)(c) cannot be levied in view of decision of the Hon'ble Supreme Court in case of Reliance Petro Products reported in 322 ITR 158. Following are the relevant findings of Hon'ble Apex Court:*

*"10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It*

*was further pointed out that the dividerids from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature."*

*5.4.1 Further, the Hon'ble Supreme Court in case of Principal Commissioner of Income Tax 2 vs. Gruh Finance Ltd vide 100 taxmann.com 104 has deleted penalty levied-on-addition-made u/s 14A. Following the findings of Hon'ble Supreme Court in both the cases referred herein above, it is held that the Assessing Officer is not justified in levying penalty u/s 271(1)(c) on addition made u/s. 14A of the Act. Hence, penalty levied on addition on account of u/s.14A for Rs.1,00,175/- is deleted.*

2. Similar order has been passed in all the years. Thus when in quantum proceedings additions has been deleted by the Tribunal, then penalty u/s 271(1)(c) of the Act cannot be upheld. Accordingly, all the appeals filed by the revenue are dismissed.

3. In the result, appeals of the revenue are dismissed.

Order pronounced on 22<sup>nd</sup> August, 2024

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 22/08/2024  
*Shubham P.Lohar*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**