

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1249/MUM/2024
(Assessment Year: 2014-15)**

Stillwater Defence Textile Technologies

B/22 Petit Mansion, 95, Sreater Road,
Mumbai – 400 007

[PAN: AADCC6835B]

..... **Appellant**

Vs

**Assistant Commissioner of
Income Tax - Circle 1(3)(1),**

RoomNo.1810A,
18th Floor, Air India Building,
Nariman Point, Mumbai- 400 021

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Swapnil Newaskar
For the Respondent/Department : Shri Avinash Baburao Karpe

Date

Conclusion of hearing : 18.06.2024
Pronouncement of order : 27.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 23/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] dismissing the appeal of the Assessee against the Penalty Order, dated 29/03/2019, levying penalty of INR 6,16,829/-passed by the Commissioner of Income Tax (Appeals) under Section 143(3) read with section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. When the Appeal was taken up for hearing, Learned Authorised Representative for the Assessee pressed into service Ground Numbers 1 to 3 raised in the present appeal which reads as

under:

- “1. *The Ld. Commissioner of Income Tax Appeal has failed to appreciate in law On the facts and circumstances the learned ACIT has erred in levy u/s. 271 (1) (c). Such penalty can be levied only in case of concealment of income and furnishing inaccurate details. In our case, there was no intentional concealment of income and furnishing inaccurate details In our case there was no intentional concealment of income. It was a bonafide error and so penalty cannot be levied on it.*
2. Order of Fresh Assessment is still pending, the previous orders passed by the Ld. A.O. dated 29/12/2016 for assessment and impugned Penalty order dated 29/03/2019 issued pursuant to old assessment order stands nullity as the effect of Order dated 23/12/2022 passed by The Hon'ble Income Tax Appellate Tribunal, Mumbai in the matter of appeal preferred by the present appellant
3. The continuance of penalty pursuant to old orders which are not effective as on date is without any jurisdiction and penalty proceeding may start as fresh only after fresh assessment will resulted against the Assessee.”
3. The facts as emanating from the record are that for the Assessment Year 2011-12, assessment was framed on the Assessee under Section 143(3) of the Act, vide assessment order, dated 29/12/2016, on assessed income of INR 1,77,01,740/- after making an addition of INR 1,77,01,740/- in respect of share premium received by the Appellant during the relevant previous year. The appeal preferred by Assessee the against the aforesaid assessment order was dismissed by CIT(A) vide order, dated 8/12/2017. Therefore, the Assessee preferred appeal before the Tribunal. Vide Order, dated 23/12/2022, passed in ITA/1238/MUM/2021, the Tribunal had set aside the issue back to the file of the Assessing Officer, thus, setting aside the aforesaid addition made by the Assessing Officer.
4. Before us it was contended by the Learned Authorised Representative for the Assessee that continuation of Penalty proceedings and levy of penalty under Section 271(1)(c) of the Act pursuant to the Assessment order, Order 29/12/2016, which

has since been set aside by Order, dated 23/12/2022, passed by the Tribunal in ITA 1238/MUM/2021, can no longer survive. It was submitted that the penalty proceedings may start afresh only after the fresh assessment is framed on the Assessee in terms of the directions issued by the Tribunal in the first round of litigation.

5. On perusal of record we find that the penalty under Section 271(1)(c) of the Act has been levied by the Assessing Officer, vide Penalty Order, dated 29/3/2019, after taking note of the fact that appeal preferred by the Assessee against the Assessment Order, dated 29/12/2016 was dismissed by the CIT(A), vide Order, dated 08/12/2017. On perusal of the order, dated 23/12/2022, passed by the Tribunal in ITA No. 1238/MUM/2021, we find that the Tribunal has set aside the addition. Accordingly, we find merit in the contention of the Assessee that penalty levied on the Assessee, vide order, dated 29/03/2019, passed under Section 271(1)(c) of the Act, cannot be sustained. Accordingly, penalty of INR 60,16,821/- levied on the Assessee under Section 271(1)(c) of the Act is deleted and Ground No. 1 to 3 raised by the Appellant are allowed, while rest of the grounds raised by the Assessee are dismissed as having been rendered infructuous.
6. In result, in terms of paragraph number 5 above, the present appeal preferred by the Assessee is allowed.

Order pronounced on 27.08.2024.

(Prashant Maharishi)
Accountant Member

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.08.2024
Patil, Sr.P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai