

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM, &
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No.4874/Mum/2023
(Assessment Year: 2012-13)**

DCIT, Central Circle-3(2) 552, Aayakar Bhawan, K. K. Road, Churchgate, Mumbai-400020.	Vs.	Viraj Profiles Pvt. Ltd. 1 st Floor, Viraj Towers, JN OF Andheri Kurla Road, W.E. Highway, Andheri (East), Mumbai-400069. PAN : AABCV1740N
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri Ankush Kapoor, CIT-DR

Respondent /Assessee by : Shri Prateek Jain, AR

Date of Hearing : 27.08.2024

Date of Pronouncement : 02.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'the CIT(A)'] dated 03.10.2023 for Assessment Year (AY) 2012-13. The Revenue raised the following grounds of appeals:

“(i) "On the facts and in the circumstances of the case, the Ld.CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 by ignoring the fact that the department has not accepted the decision of the Hon'ble ITAT with respect to the quantum addition and preferred further appeal before the Hon'ble Bombay High Court vide ITXAL/31003/2023 dated 03.11.2023.”

The appellant craves to leave, to add, to amend and / or to alter any of the round of appeal, if need be.”

2. The assessee is a company and filed the return of income for AY 2012-13 on 30.11.2012 declaring an income of Rs. 77,03,94,484/-. There was a search carried out in assessee's premises and the Assessing Officer (AO) completed the assessment for the year under consideration under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (the Act) assessing the income of the assessee at Rs. 242,42,59,531/-. The AO also initiated the penalty proceedings under section 274 r.w.s. 271(1)(c) of the Act. On further appeal, the CIT(A) deleted the penalty for the reason that the co-ordinate bench has deleted the addition in the quantum appeal. The revenue is in appeal against the order of the CIT(A) before the Tribunal.

3. We heard the parties and perused the material on record. The ld. AR during the course of hearing submitted that the co-ordinate bench has deleted the addition made by the AO for the year under consideration and submitted a copy of the order of the Tribunal (ITA No. 1772 and 1773/Mum/2021 dated 26.04.2023). Since the addition made by the AO is deleted by the co-ordinate bench, the order of penalty

passed by the AO does not survive. Therefore, we see no reason interfere with the decision of the CIT(A) in deleting the penalty levied by the AO.

4. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 02-09-2024.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai