

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
**BEFORE SMT. KAVITHA RAJGOPAL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 1695/Mum/2024 (A.Y.2006-07)

ACIT

R. No. 545, 5th floor,
Aayakar Bhavan,
New Marine Lines,
Mumbai – 400 020

..... Appellant

Vs.

M/s. Jyoti Structures Limited,

Andheri West, 6th floor,
Valecha Chambers
Mumbai- 400 053
PAN No. AAACJ2499R

..... Respondent

Appellant by	:	Ms. Rajeshwari Menon, Ld. DR
Respondent by	:	Shri Kailash Jiwtani, Ld. AR
Date of hearing	:	08/08/2024
Date of pronouncement	:	09/09/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by revenue is directed against the order of Ld. CIT (A) – 49, Mumbai dated 30.11.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2006-07. The revenue has raised the following grounds of appeal:-

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the penalty levied u/s. 271(1) (c) of the Act.*

2. *the appellant craves the leave to add, amend, alter and /or delete any of the grounds of appeal as above.*

2. The brief facts of the case are that in the case of the assessee a search and seizure action u/s. 132 of the Income Tax Act, 1961 was conducted in the case of M/s. Jyoti Structures Limited and its other group companies along with the residential premises of the Directors and Executive Directors of JSL Group of Companies on 26-07-2011 by the ADIT (Inv), Unit- 11(3), Mumbai and on subsequent dates. Various factors warranted the search action u/s. 132 of the IT Act, 1961 on the group cases of the assessee. The present assessee was covered under the search action u/s. 132(1) of the Act carried out in the case of M/s. Jyoti Structures Ltd. During the pendency of proceedings, the jurisdiction over the case was transferred from Central Circle - 43, Mumbai to Central Circle-41, Mumbai vide order dated 15-07-2013.

3. It is not out of place to mention here that a search action u/s. 132 of the Act took place in the case of the assessee on 30-05-2007 i.e. this search is hereafter referred to 1st search action. In response to the notice issued u/s. 153A of the Act in connection with the 1st search action, the assessee filed its return of income on 28-11-2007 declaring total income of Rs. 26,79,35,872/- and the assessment was completed u/s. 143(3) r.w.s. 153A of the Act on 31-12-2009 assessing the total income at Rs. 26,79,35,872/-.

4. Subsequently, 2nd search action was carried out at the premises of the assessee on 26-07-2011. Subsequently, notice u/s. 153A of the Act was issued to

the assessee on 15-03-2012 and was served upon the assessee. In response to the notice u/s. 153A of the Act, the assessee filed its return of income on 05-11- 2012 declaring total income at Rs. 26, 79, 35,872/-. Notice u/s. 143(2) dated 04-07-2013 was issued and served upon the assessee. Notices u/s. 142(1) of the Act was also issued from time to time to the assessee calling for details, clarifications, etc. In response to these notices the submissions made and clarifications given are placed on record.

5. During the course of assessment proceedings, it is seen from the clause 17(a) of Form No. 3CD Audit Report that the auditors have given their remark that an amount of Rs. 1, 62, 49,300/- being Employee Compensation Expenses (ESOP) is capital expenditure; however, the assessee company has reduced the said amount from the computation of business income. On being noticed this discrepancy, the assessee company vide this office letter dated 08-10-2013 was asked to explain the contradiction and was also asked to explain the reasons as to why the said amount of Rs. 1,62,49,300/- should not be disallowed.

6. Ultimately, the case of the assessee was assessed by disallowing the amount of Rs. 1, 62, 49,300/- and added the same to the return income of the assessee. The assessee being aggrieved with this order preferred an appeal before the Ld. CIT (A) who in turn confirmed the order of the AO. The assessee being further aggrieved preferred the quantum appeal before the Coordinate Bench, wherein the Coordinate Bench vide ITA No. 5367/Mum/2015 dated 08.08.2018 allowed the appeal of the assessee and directed the AO to allow the claim of ESOP expenditure of Rs. 1,62,49,300/-. The AO while framed the assessment order mentioned (supra) initiated a penalty proceeding u/s. 271(1) (c) of the Act

and ultimately passed the order u/s. 271(1) (c) of the Act vide dated 31.03.2017 imposing a penalty of Rs. 54, 69,514/-. The assessee being aggrieved with this order imposing penalty of Rs. 54, 69,514/- u/s. 271(1) (c) of the Act preferred an appeal before the Ld. CIT (A), who in turn allowed the appeal of the assessee based on the decision of Coordinate Bench wherein the quantum addition itself has been deleted.

7. Against this order of Ld. CIT (A), the revenue felt aggrieved and filed the present appeal before us. This appeal of revenue is time barred by 67 days and duly conveyed to the appellant. In response to this communication, the Ld. Departmental Representative filed an application for condonation of delay duly signed by the AO vide application dated 04.04.2024 with a covering letter dated 08.08.2024. We have considered the application for condonation of delay and found the same as a reasonable cause in not filing the appeal in time. Hence, delay in filing of appeal is condoned.

8. We have gone through the order of the AO passed u/s. 143(3) r.w.s. 153A of the Act, order of the Ld. CIT (A) passed u/s. 250 of the Act, order of the Coordinate Bench u/s. 254 of the Act (Dealing with quantum addition) and submissions of the assessee and Revenue alongwith grounds taken by the Revenue before us. It is observed that quantum addition has already been nullified by the Coordinate Bench and there is no base remained for imposition of the penalty.

9. In view of the aforesaid fact that the Tribunal itself has deleted the entire addition made by the Assessing Officer on which the penalty has been levied

under Section 271(1)(c) of the Act, the penalty does not survive and has no legs to stand. Thus, same has rightly been cancelled by the Id. CIT (A). Accordingly, we confirm the order of Ld. CIT (A) and dismissed the grounds taken by the revenue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 9th day of September, 2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 09/09/2024
Dhananjay, Sr. PS

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai