



IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 784/MUM/2024

A.Y.2021-22

MJ Patel Share and Stock
Brokers Ltd.

PG-4, Rotunda Building,
Mumbai Samachar Marg,
Mumbai-400001

(Appellant)

Vs.

Assistant Director of
Income Tax, CPC,
Bengaluru

(Respondent)

PAN

AAACM 8215E

Assessee by

Shri Adesh Kumar Agrahari

Revenue by

Shri Ashok Kumar Ambastha,

Senior DR

Date of hearing

5th August, 2024

Date of pronouncement

10th October, 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA number 784/M/2024 is filed by MJ Patel Share and Stock Brokers Private Limited (the assessee/appellant) for Assessment Year 2021 - 22 against the appellate order passed by the Joint Commissioner of Income Tax (A) Visakhapatnam dated 12/01/2024 wherein the appeal filed



by the assessee against the intimation order passed by the Deputy Director of Income Tax, Centralised Processing Centre, Bangalore (the learned AO) under section 143 (1) of the income tax Act 1961 (the Act) dated 24/8/2022 was dismissed.

2. Assessee is aggrieved and is in appeal before us raising following grounds of appeal:

- "1. The learned ADDL/JCTT (A) erred in confirming the adjustment of Rs.112,984/- u/s 143(1)(a)(iv) being penalty or fine as under:

Sr. No.	Particulars	Amount
1.	BSE-Adverse observation in IAR	16,000
2.	BSE-6A-7A Penalties to ICCL	12,295
3.	BSE-Penal Charges for late submission of Half Yearly Net Worth	12,700
4.	BSE-TM-Penalty for Short or Non-collection of Client Margin of Eq. Segment	51,152
5.	NSE-Adverse observation in IAR Sept. 2019	6,000
6.	NSE-TM-Penalty for Short or Non-Collection of Client Margin of Eq. Segment	137
7.	NSE-Late/Non- submission of Half Yearly Net Worth	14,700
	TOTAL	1,12,984

without appreciating that Section 143(1)(a)(iv) was wrongly invoked as the penalty or fine of Rs.1,12,984/- as above was not indicated in the audit report for disallowance and hence the adjustment of ₹112,984/- may be delete.

2. The learned ADDL/JCIT (A) erred in confirming the adjustment of ₹ 112,984/- 143(1)(a)(iv) being penalty or fine as under:

Sr. No.	Particulars	Amount
1.	BSE-Adverse observation in IAR	16,000
2.	BSE-6A-7A Penalties to ICCL	12,295
3.	BSE-Penal Charges for late submission of Half Yearly Net	12,700



	Worth	
4.	BSE-TM-Penalty for Short or Non-collection of Client Margin of Eq. Segment	51,152
5.	NSE-Adverse observation in IAR Sept. 2019	6,000
6.	NSE-TM-Penalty for Short or Non-Collection of Client Margin of Eq. Segment	137
7.	NSE-Late/Non- submission of Half Yearly Net Worth	14,700
	TOTAL	1,12,984

without appreciating that penalty of Rs 112,984/- is compensatory in nature and the provisions of Explanation 1 to Section 37 are not attracted and hence the adjustment of Rs 112,984/- may be deleted.

3. The assessee is carrying on the business of share and stock broking, filed its return of income on 25/1/2022 declaring a total income of ₹1,71,41,810/-. Subsequently, Central Processing Centre issued a communication dated 14th April 2022 was received by the assessee wherein the addition of ₹ 1,12,984/- under section 143(1)(a)(iv) of the Act was found to be inconsistency in the order and the return. Assessee disclosed it to be penalty. In response to that notice under section 143(1) of the Act assessee could not upload any reply because of the reason that the notice was not reflected on portal due to glitches and finally time for submission of response was over. Ultimately, the central processing Centre finally made the addition by disallowing ₹1,12,984/- by passing an intimation under section 143(1) dated 24/8/2022.
4. Against the same, the assessee preferred an appeal before the learned CIT – A and made the detailed submissions and stated that the above payment made by the assessee are not



in the nature of the penalty. The learned Assessing Officer held that in plain reading of Explanation-1 and 3 of Section 37(1) the penalties paid by the assessee to stock exchange are disallowable under Section 37(1) of the Act and, therefore, the appeal of the assessee was dismissed.

5. Assessee aggrieved with the above is in appeal before us.
6. The learned Authorised Representative submitted a detailed Paper Book containing 106 pages covering the tax audit report and submission made before the learned CIT – A on 2 occasions. Further a paper book containing 106 pages of judicial precedents were also submitted wherein it was contested that the above payment of assessee cannot be said to be a penalty. Several Circulars of National Stock Exchange, Bombay Stock Exchange and Securities and Board of India were also pressed into service.
7. The learned Departmental Representative (DR) vehemently supported the order of the learned CIT-A and submitted that above payment of penalty made by the assessee has been disclosed in the tax audit report, which is placed at Page No. 1 – 29 of the Paper Book. He specifically referred to Page No. 11 of the Paper Book, wherein the expenditure by way of any other penalty or fine was disclosed. It was submitted that the learned Assessing Officer picked up this mismatch and made the addition. He further stated that all the amount of penalty that is paid by the assessee has been disallowed in view of the provisions of Explanation -1 – 3 of Section 37(1) of the Act.



8. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The assessee has submitted a detailed chart at Page No. A & B of the paper book wherein the nature of the penalties have been explained by the assessee. The total penalty of ₹ 1,12,984/- was levied, these penalties is with respect to the delayed intimation of institutional trade to custodian and short collection of margins from clients. Though assessee in tax audit report in Form No 3 CD has shown it to be penalty but now it is contested that same is not disallowable expenses u/s 37 (1) of the Act. We are concerned here that whether such payment is disallowable or not.
9. We find that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in case of Income Tax Commissioner, City - 4 Vs. Angel Capital and Debt Market Limited in ITA No. 475 of 2011 dated 28th July, 2011 and also the decision of the honourable Bombay High Court in case of stock and bond trading company in ITA No. 4117 of 2010 dated 14th October, 2011 wherein it has been held that the payments made by the assessee to the stock exchange for violation of the regulation are not on account of an offence or which is prohibited by law and therefore invocation of explanation to Section 37 of the Income Tax Act is not justified. We have also considered the nature of penalty of ₹ 1,12,984/- which is also levied for the violation of rules and regulation as well as by laws of the Bombay Stock Exchange and National Stock Exchange.



Therefore, the issue is decided in favour of the assessee by directing the learned Assessing Officer to delete the disallowance of ₹1,12,984/-. Accordingly Ground Nos. 1 and 2 of the appeal of the assessee is allowed.

10. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 10/10/2024..

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 10.10.2024

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai