

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Satbeer Singh Godara, Judicial Member and  
Shri Amarjit Singh, Accountant Member

**ITA No. 570/Coch/2023**  
(Assessment Year: 2016-17)

Bhima Gold and Diamonds Central Junction Adoor 691523 [PAN: AANFB8547J]	vs.	Assistant Commissioner of Income Tax Kollam
(Appellant)		(Respondent)

Appellant by:	Shri R. Krisahnan, CA
Respondent by:	Smt. V. Swarnalatha, Sr. D.R.

Date of Hearing:	22.08.2024
Date of Pronouncement:	23.10.2024

**ORDER**

Per Bench

This assessee's appeal for A.Y. 2016-17 arises against the National Faceless Appeal Centre, Delhi [CIT(A)]'s DIN & Order No. ITBA/NFAC/S/250/2023-24/1053337184(1) dated 31.05.2023 in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act).

Heard both parties at length. Case file perused.

2. Coming to the sole substantive ground that both the lower authorities have erred in law and on facts in levying the impugned section 271(1)(c) penalty of Rs.3,83,160/- , it emerges during the course of hearing that the same pertains to section 40(b) partners remuneration disallowance which was allegedly claimed over and above the sum(s) specified in the corresponding partnership deed. The Revenue

vehemently supported the impugned penalty that the assessee had exceeded the impugned quantum claim well beyond the relevant clauses therein.

3. We have given our thoughtful consideration to the vehement stand of the Revenue and find no merit in its arguments in light of CIT vs. M/s. Reliance Petro Products [2010] 322 ITR 158 (SC) that quantum and penalty are separate proceedings and each and every disallowance/addition in former does not *ipso facto* attract the latter penal provision. We delete the impugned penalty going by the very analogy. Ordered accordingly.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 23<sup>rd</sup> October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
(Amarjit Singh)  
Accountant Member

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Cochin, Dated: 23<sup>rd</sup> October, 2024

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Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin