

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

BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

I.T.A No.2262/Mum/2024  
(Assessment Year:2013-14

<b>India Tube Mills &amp; Metal Industries Pvt Ltd,</b> 10 <sup>th</sup> Floor, 215, Atrium, Andheri-Kurla Road, Andheri (East), Mumbai-400 059 <b>PAN : AAACI3048R</b>	vs	<b>A.C.I.T.-15(2)(1), Mumbai</b> Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Surinder Mehra, CA  
Respondent by : Shri Krishna Kumar (SRDR)

Date of hearing : 12/11/2024  
Date of pronouncement : 13/11/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2013-14, date of order 22.03.2022. The impugned order is emanated from the order of the National Faceless Assessment Centre, Delhi (in brevity, 'the Ld.AO') passed under section 271(1)(c) of the Act, date of order 17/02/2022.

2. The assessee has taken the following grounds:-

*“GROUNDS OF APPEAL TO THE INCOME TAX APPELLATE TRIBUNAL MUMBAL IN THE CASE OF M/S, INDIA TUBE MILLS AND METAL INDUSTRIES PVT.LTD, 10TH FLOOR, 215, ATRIUM, ANDHERI-KUREA ROAD, ANDHERI (EAST), MUMBAI-400059, IN RESPECT OF ASSESSMENT YEAR 2013-2014 AGAINST THE ORDER OF THE CIT(A) AGAINST PENALTY LEVIER 271(10)*

*La) That the CIT(A) has erred in upholding the penalty levied u/s. 271(1) of Rs. 22,93,736 when all facts were disclosed by the appellant company and there was no concealment of facts and as such no penalty was leviable in view of the Supreme Court in the case of CIT Vs Reliance Petroproducts Ltd. reported in 322 ITR 158*

*1.b) That as recorded in Para 3 of the Assessment Order passed, the loss by theft was clearly shown in the Profit & Loss Ac. of the appellant company and from there the assessing officer made enquiries from the appellant company in that regard. As the said fact was duly shown in the Profit & Less Alc. itself of the appellant company, there was no concealment of facts by the appellant company and no penalty is leviable in respect of the same.*

*Le) That as is apparent from the appellant's contention and submissions recorded by the CIT(A) in his order in Para 3.1y of the CTTAY's order, the said loss arose in the regular course of carrying on the business and was allowable deduction and there is no reason for disallowance of the same.*

*1.d) That as the loss was bona fide and arose during the course of business and is allowable deduction, penalty levied in respect of the same may be cancelled.*

*1.e) That the loss arose at the Loni site of the customer of the appellant company which was not in physical control of the appellant company and as such the appellant company could not maintain stock register data for the same. There were number of other contractors also working at the said site and the appellant company's not a single contractor was working at the site and anyone could have done the mischief. As such there is no reason for disallowing the said loss and levying penalty on the same.*

*1.5). That the penalty imposed of Rs. 22,93,736/- may be cancelled.*

2.a) That the order passed is clearly time barred and the CIT(A) has erred in not accepting the grounds of appeal filed by the appellant company before him in that regard.

2.b) That this is in view of the provisions of proviso to Section 275(1) (a) of the Act. The order of the CIT(A) for the assessment year under consideration is dated 25.10.2019 and was received by the CIT(A) in financial year ending 31.3.2020. Under the said proviso, time for imposition of penalty is allowed upto one year from the end of the financial year in which the order of the CIT(A) is received. As such the last date for imposition of penalty was 31.3.2021. As such the order now in appeal dated 17.02.2022 is clearly time barred and may be cancelled.

2.c) That the CIT(A) has in para 7.2 of his order held that the CBDT vide Notification No. 74/2021/F.No.370142/35/2020-TPL dated 25.06.2021 had extended the time for passing orders till 30.09.2021. However, the order passed is dated 17.02.2022 which is much after the said date and is clearly time barred and may be cancelled.

1.e) That the loss arose at the Loni site of the customer of the appellant company which was not in physical control of the appellant company and as such the appellant company could not maintain stock register data for the same. There were number of other contractors also working at the said site and the appellant company's not a single contractor was working at the site and anyone could have done the mischief. As such there is no reason for disallowing the said loss and levying penalty on the same

1.f) That the penalty imposed of Rs. 22,93,736/- may be cancelled.

2.a) That the order passed is clearly time barred and the CIT(A) has erred in not accepting the grounds of appeal filed by the appellant company before him in that regard.

2.b) That this is in view of the provisions of proviso to Section 275(1) (a) of the Act. The order of the CIT(A) for the assessment year under consideration is dated 25.10.2019 and was received by the CIT(A) in financial year ending 31.3.2020. Under the said proviso, time for imposition of penalty is allowed upto one year from the end of the financial year in which the order of the CIT(A) is received. As such the last date for imposition of penalty was 31.3.2021. As such the order now in appeal dated 17.02.2022 is clearly time barred and may be cancelled

*2.e) That the CIT(A) has in para 7.2 of his order held that the CBDT vide Notification No. 74/2021/F.No.370142/35/2020-TPL, dated 25.06.2021 had extended the time for passing orders till 30.09.2021. However, the order passed is dated 17.02.2022 which is much after the said date and is clearly time barred and may be cancelled.*

*2.d) That the CIT(A) has erred in relying upon the decision of the Supreme Court dated 10.01.2022 for extension of time upto 28.02.2022. The Supreme Court had granted time for extending time for filing of appeals and not for passing of orders by the assessing officer which was extended by the CBDT notification. So the said decision of the Supreme Court is not applicable to the present case and there is delay on the part of the assessing officer in passing penalty order and the order being time barred may be cancelled.”*

3. The brief facts of the case are that the assessment was completed with additions under different heads. Finally, the assessment order was challenged before the appellate authority. The appellate authority partly allowed the appeal and confirmed the additions related to disallowance of loss by theft amount to Rs.73,59,503/-, the difference in form 3CD and statement of income amount to Rs. 62,944/- and the disallowance under 14A of the Act restricted to amount of Rs.645/- which works out total amount Rs. 74,23,092/-. The assessee has not challenged the quantum appeal order before the higher appellate authority. After giving effect to the order of appeal, the total income of the assessee was determined at a loss of Rs.9,41,24,604/- and the concealed income was determined amount to Rs.74,23,092/-. Finally, the tax on the concealed income was calculated amount to Rs.22,93,736/- by the Id.AO. The penalty under section 271(1)(c) of the Act was initiated and a penalty of Rs.22,93,736/- was levied on the assessee being 100% of the tax sought to be evaded. Being aggrieved on the penalty order, the assessee filed an appeal before the Id. CIT(A). The Id.CIT(A)

uphold the penalty order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. We heard the rival submissions and considered the documents available in the record. The Ld.AR argued and stated that related to theft, the loss was occurred, and the assessee has filed the FIR in the police station. The assessee accepted the additions confirmed by the Id. CIT(A) and had not challenged the appeal order before the higher authority. But the addition of loss on theft, disallowance under section 14A of the Act and difference in form 3CD and statement of income all the three additions are related filing inaccurate particulars under incorrect claim of expenses. The issue is duly covered by the order of the Hon'ble **Apex Court** in the case of **CIT vs Reliance Petroproducts Pvt Ltd (2010) 322 ITR 158 (SC)**, where it was held that the incorrect claim tantamount to furnishing of inaccurate particulars, is not liable for penalty. The Ld.AR in argument placed that all the expenses are disallowed only due to incorrect claim of expenses.

5. The Ld.DR argued and fully relied on the order of the revenue authorities.

6. In our considered view, we find that the disallowance of expenses related to loss on theft, difference in financial statement & 3CB and the disallowance under section 14A of the Act. We note that the sustained additions are related to incorrect claim of expenses. In reaching this conclusion, we respectfully rely on the order of the Hon'ble Apex Court in **Reliance Petroproducts Pvt Ltd (supra)**. The Ld. AR had not able to submit any contrary judgment against the submission of the

Id.AR. Accordingly, we set aside the impugned appeal order and the impugned penalty amount to Rs.22,93,736/- is deleted.

7. In the result, the appeal of the assessee bearing **ITA No.2262/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 13<sup>th</sup> day of November, 2024.

Sd/-

(RENU JAUHRI)  
ACCOUNTANT MEMBER  
Mumbai,दिनांक/Dated: 13/11/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai