

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1288/KOL/2024
Assessment Year: 2011-12**

M/s Om Steel India 233/6, Belilious Road, Kadamtala, Howrah, West Bengal-711101	Vs	ACIT/ITO, NFAC North Block, New Delhi, Delhi-110001
(Appellant)		(Respondent)
PAN: AABFO6097Q		

Present for:

Appellant by : Shri Arya Das, AR
Respondent by : Shri P. P. Barman, CIT DR

Date of Hearing : 09.09.2024
Date of Pronouncement : 04.12.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. National Faceless Appeal Centre, Delhi {hereinafter referred to as “the Ld. CIT (A)”} passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2011-12 dated 06.05.2024, which has been passed against the penalty order passed u/s 271(1)(c) of the Act vide order dated 25.03.2022.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1. For that on the facts and circumstances of the case, the order passed under section 271(1)(C) of the IT. Act dated 25/03/2022 by ACIT/ITO, National Faceless. Assessment Centre for the assessment year 2011-12 and subsequently confirmed by the ld. CIT (Appeal) NFAS dated 06/05/2024, is completely arbitrary, unjustified and illegal

2. For that on the facts and circumstances of the case, the Ld Appellate Authority vide order dated 06/05/2024 was wrong in confirming the

imposition of penalty of Rs 1,77,028/ made by the Ld A.O. u/s 271(1)(c) of the Income Tax act, 1961 for the assessment year 2011-12 on the basis of a disputed additions of Rs 5,72,906/ which was subsequently deleted by the Hon'ble Bench 'A' of this Hon'ble Tribunal in ITA NO 120/KOL/2020 vide an order dated 15/09/2021 and as such the order dated 06/05/2024 is entirely bad in law.

3. For that the Ld. Appellate Authority ought to have taken into consideration that if an addition of income made by the Ld. A.O. is subsequently deleted by the Hon'ble income Tax Appellate Tribunal, the penalty imposed for such addition made by the concerned authority also becomes null and void.

4. For that the previous Accountant of the appellant/assessee being Sri Sahadev Ghosh created an e-mail id being guptajee1975@gmail.com and password on behalf of the assessee and kept the same with him and all the official communication from the Income Tax Department used to come in the said e-mail id. The said Accountant left his job on November, 2023 and while leaving the job forgot to provide the registered email id and password created by him to the assessee/appellant and as such, the communications made thereafter by the Department remained unseen by the assessee and the appeal proceedings was unattended/unrepresented by the assessee and an ex-parte appellate order was passed.

5. For that the appellant reserves the right to adduce any further ground or grounds, necessary, at or before the hearing of the appeal.”

3. The only effective issue raised in this appeal is against the order of the ld. CIT (A) confirming the penalty of ₹1,77,028/- imposed by the Ld. AO u/s 271(1)(c) of the Act on the basis of an addition of Rs. 5,72,906/- which has been subsequently deleted by the co-ordinate Bench of the Tribunal.

4. Brief facts of the case are that the assessee is a registered partnership firm. The case of the assessee was selected for proceedings u/s 147 of the income tax act 1961 on the ground of bogus purchases and the assessment was made u/s. 143(3)/147 of Act, on 22/12/2018. In the assessment proceedings, the Ld. A.O added entire alleged bogus purchase of Rs. 1,12,33,443/- in the hands of the assessee. Subsequently, the Ld. CIT(A) partly allowed the appeal and partly confirmed the amount assessed by the Ld. AO by applying the G.P. rate to the tune of Rs. 5,72,906/-. Being aggrieved with the order passed by the Ld. CIT(A) dated

18/10/2019, the assessee preferred an appeal before the 'A' Bench of the Tribunal at Kolkata and vide order dated 15.09.2021 in ITA No.120/Kol/2020, the Tribunal deleted the entire addition. During the course of the assessment proceedings, the Ld. AO had initiated penalty proceeding u/s 271(1)(c) of the Act on 20.11.2019. Subsequently on 23.07.2021, the Ld. AO issued a show cause notice with regard to the penalty proceedings against which the assessee submitted a reply dated 04/08/2021 asking the Ld. AO to keep the penalty proceedings in abeyance till the disposal of the appeal which was pending before the Tribunal. Despite the order of the Hon'ble The Tribunal, the ld. AO vide order dated 25.03.2022 imposed penalty of ₹1,77,028/- u/s 271(1)(c) of the Act. Aggrieved, against the penalty order, the assessee preferred an appeal before the ld. CIT (A).

5. In the appellate proceedings, the ld. CIT (A) issued notices dated 01.12.2023, 11.12.2023 and 05.01.2024 to the assessee, which could not be complied with. The ld. CIT (A), vide *ex-parte* order, confirmed the imposition of penalty made by the ld. Assessing Officer. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us.

6. We have heard the rival contentions and perused the material available on record. We find that the Tribunal in ITA No.120/Kol/2020 vide order dated 15.09.2021 deleted the entire addition on the ground of alleged bogus purchases, thereby the penalty proceedings became infructuous as the penalty proceeding was initiated on the ground of alleged bogus purchases. In spite of the Tribunal's order dated 15.09.2021, the ld. AO, vide order dated 25.03.2022, imposed the penalty of Rs.1,77,028/- which is completely unjustified and illegal. Since, the addition on the alleged



bogus purchases had been deleted by the Tribunal, no penalty could be levied on this ground. We, therefore, direct the ld. AO to cancel the penalty.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 4th December, 2024 at Kolkata.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(RAKESH MISHRA)
ACCOUNTANT MEMBER

Kolkata, Dated 04.12.2024.

**SS, Sr.Ps*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata