

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'I' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No. 2517 and 2518/ Ahd/ 2013
Assessment years: 2005-06 and 2006-07

**Assistant Director of Income Tax
International Taxation -II, Ahmedabad****Appellant**

Vs.

Dalma Energy LLC**Respondent**
*102, Pleasure Terrace
18, Vishwas Colony, Off R C Dutt Road
Alkapuri, Vadodara 390 007 [PAN: AABCD8102E]*

Appearances by:

Uma Shankar Prasad *for the appellant*
Nirmit Mehta *for the respondent*

Date of concluding the hearing : May 31, 2017
Date of pronouncing the order : May 31, 2017

O R D E R

Per Pramod Kumar AM:

1. These two appeals pertain to the same assessee, involve a common issue arising out of materially similar set of facts and were heard together. As a matter of convenience, therefore, both of these appeals are being disposed by a common order. The details of orders impugned in these appeals are as follows:

- (a) Order dated 23rd August 2013 passed by the learned CIT(A) cancelling the penalty of Rs 42,12,215, imposed under section 271(1)(c) of the Income Tax Act, 1961, for the assessment year 2005-06, on the ground that the related quantum addition disallowance of Rs 1,00,72,215, on account of ~~Head Office Expenditure~~ stands deleted by this Tribunal vide order dated 23rd April 2012: and
- (b) Order dated 23rd August 2013 passed by the learned CIT(A) cancelling the penalty of Rs 33,28,742, imposed under section 271(1)(c) of the Income Tax Act, 1961, for the assessment year 2005-06, on the ground that the related quantum addition disallowance of Rs 79,59,689, on account of ~~Head Office Expenditure~~ stands deleted by this Tribunal vide order dated 23rd April 2012.

2. Learned Departmental Representative does not dispute the fact that the related quantum disallowances were deleted by the Tribunal, and as such, the very foundation of impugned penalties, ceases to hold good in law. His contention, however, is that since the order of the Tribunal, so granting relief to the assessee in the quantum proceedings, is in challenge before Hon^{ble} High Court, the CIT(A) ought not to have deleted the impugned penalties. He submits that the matter is required to be kept alive in case Hon^{ble} High Court upholds the appeal of the revenue, and states that he is hopeful that eventually stand of the Assessing Officer will be upheld by Hon^{ble} Courts above.

3. Learned counsel for the assessee, on the other hand, submits that since the related quantum disallowances stand deleted, there is no basis whatsoever for the impugned penalties, and that learned CIT(A) was indeed quite justified in deleting the impugned penalties. There cannot be, according to the learned counsel, any questions about the relief granted by the CIT(A) and that the appeal is filed without any application of mind and is wholly frivolous. He submits that such appeals must be discouraged by imposing costs on the appellant. As for the apprehensions of learned Departmental Representative on legitimate interests of the revenue with respect to penalties being prejudiced, in case revenue succeeds in its appeal before Hon^{ble} High Court, unless the matter is kept alive by carrying the deletion of penalty in appeal, learned counsel for the assessee submits that Section 275 (1A) takes adequate care of such an eventuality, and that the Assessing Officer can very well impose the penalty, if necessary, within six months from the end of the month in which the order of Hon^{ble} High Court or Hon^{ble} Supreme Court is received. We are urged to confirm the action of the CIT(A) and to award costs to the assessee.

4. There cannot be, and there is no, dispute about the fundamental legal position that once the related quantum additions or disallowance stand delete in the assessment proceedings, the very foundation of penalties under section 271(1)(c) ceases to hold good in law. Learned CIT(A) therefore had no other option but to delete the impugned penalties. There is, thus, no infirmity in the order of the learned CIT(A), and, as such, there is no occasion to interfere in the matter. As at the point of time when this appeal was filed, there was indeed no basis for the grievance being raised by the Assessing Officer, and, in that sense, this appeal is indeed a wholly frivolous appeal filed without any application of mind by the authorities concerned. There cannot be any point in filing an appeal when the person filing the appeals knows for sure that the appeal is bound to be dismissed. As for the impact of succeeding in pending before Hon^{ble} High Court, in that event, the penalty can anyway be imposed under section 275(1A). Learned Departmental Representative does not dispute that. The entire exercise of filing these appeals is thus wholly devoid of any merits. Inconvenience to the assessee apart, such filing of appeals results in wholly avoidable wastage of time of the official machinery, clogs the judicial system and is environment unfriendly. As we write this order, we find that, in the files before us, around 480 A4 size papers are on record, and an equal number of papers must have been used by the learned Departmental Representative and the learned counsel for the assessee, apart from paperwork by the tax administration. These approximately 2,000 sheets of paper are thus wasted causing damages to the environment, in addition to the wastage of precious resources of the state and wholly avoidable inconvenience to the taxpayer, because appeals was filed, almost

mechanically and without any application of mind, without realizing that it cannot result in any benefit to anyone; it was a meaningless ritual. There is no point in blaming an individual or imposing even token costs on anyone; it is a systemic issue. While it is true that the calls, as to whether to file the appeals or not, are taken at a fairly senior level but then it is not really practicable, looking to the workload of these senior officials, to examine the matter in great detail. They are essentially dependent on inputs from people in lower hierarchy who are not sanitized, and trained, enough to properly assist in this process of decision making. Unfortunately, the existing system in the tax administration permits the possibilities of these lapses. We deprecate the action of the tax administration in filing these appeals, and hope that suitable systemic checks and balances will be introduced by the tax administration so as to avoid such lapses in future. With the kind of pragmatic and responsive approach that has been displayed by the tax administration in the recent past, we are sanguine that suitable action will be taken to avoid recurrence of these cases and it will be ensured that these lapses do not occur in future. We leave it at that for the time being.

5. In the result, the appeals are dismissed. Pronounced in the open court today the 31st day of May, 2017.

Sd/-
Mahavir Prasad
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Ahmedabad, the 31st day of May, 2017

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad