

CIT was justified in penalty order if disallowance relating to 'head office exp.' was set-aside by ITAT

Summary – The Ahmedabad ITAT in a recent case of Dalma Energy LLC., (the Assessee) held that where quantum disallowance relating to 'Head Office Expenditure' was deleted by Tribunal, very foundation of penalty imposed under section 271(1)(c) in respect of same ceased to hold good in law and, therefore, Commissioner (Appeals) was justified in setting aside impugned penalty order

Facts

- In the appellate proceedings, the Commissioner (Appeals) set aside the penalty order passed under section 271(1)(c) on the ground that the related quantum disallowance on account of 'Head Office Expenditure', was deleted by the Tribunal.
- The revenue filed instant appeal contending that since the order of the Tribunal granting relief to the assessee in the quantum proceedings was in challenge before the High Court, the Commissioner (Appeals) ought not to have deleted the impugned penalty.

Held

- There cannot be, and there is no, dispute about the fundamental legal position that once the related quantum addition or disallowance stands deleted in the assessment proceedings, the very foundation of penalty under section 271(1)(c) ceases to hold good in law. The Commissioner (Appeals) therefore had no other option but to delete the impugned penalty. There is, thus, no infirmity in the order of the Commissioner (Appeals), 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 proceedings before High Court, in that event, the penalty can anyway be imposed under section 275(1A). The revenue does not dispute that. The entire exercise of filing the appeal is thus wholly devoid of any merit.
- In the result, the appeals is dismissed.