आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं **/ ITA No. 167/Ahd/2024**
निर्धारण वर्ष/**Assessment Year : 2009-10**

Ramchand Bhulchand Rajai, C/o. Jayesh Tyres, Opp. Railway Station, Bhavnagar-364001 PAN : ABMPR 4841 D	बनाम Vs.	The Deputy Commissioner of Income-tax, Circle-1, Bhavnagar
अपीलार्थी/ (Appellant)		**प्रत्यर्थी**/ (Respondent)

निर्धारिती की ओर से / Assessee by :	Shri B.R. Popat, AR
प्रत्यर्थी की ओर से / Revenue by:	Shri Prateek Sharma, Sr DR

सुनवाई की तारीख /Date of Hearing : 22/04/2024
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 18.01.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], confirming the levy of penalty u/s 271(1)(c) of the Act, for the Assessment Year (AY) 2009-10.

2. The penalty in the present case was levied on concealment/furnishing of inaccurate particulars of income, arising from the following disallowances made by the Assessing Officer which were confirmed upto the ITAT:-

(i) Disallowance u/s 40A(3) of Rs.1,77,20,947/-, sustained by the Ld.CIT(A) and confirmed by the ITAT to Rs.65,20,741/-

(ii) Disallowance of loading and unloading expenses of Rs.12,12,400/- sustained by the Ld.CIT(A) and confirmed by the ITAT to Rs.1,81,860/-.

3. The facts relating to the respective disallowances are reproduced in the penalty order as under:-

> *"Disallowance u/s. 40A(3) Rs. 1,77,20,9471-:*
>
> *During the course of assessment proceedings the assessing officer observed from the cash book of M/s SNR Logistics that the assessee has made cash payment in excess of Rs.20,000/-. Accordingly, show cause was issued requesting the assessee as to why the amount paid in cash the excess of Rs.20,000/- to a single party in a day should not be disallowed. The assessing officer did not accept the reply of the assessee as the assessee is in the business of transport of goods by road, trucks and trailers. The assessee was to hire the trucks and trailers from other transporters and individual truck owners and used to supply to the client companies. The assessee was not the owner of any trucks. The assessee was paying rent on hired trucks and was in turn giving the same on rent to others. The payments given by the assessee to the truck drivers formed part of rent. The assessing officer was of the view that the alleged advance was not an advance in actual sense but was payment made of rent to drivers on behalf of vehicle owners. These truck drivers were employees of the parties from whom the assessee rented the vehicle and accordingly the officer disallowed the payments in excess of Rs. 20,000/- to a single party in a single day. Penal proceedings u/s 271(1)(c) were also initiated for concealment of income.*
>
> *The Ld CIT(A) vide order dated 28.03.2014 confirmed the addition of Rs. 65,20,741/- giving relief to the assessee were the payment was not in excess of Rs. 20,000/- and also excluded the payment made to road expenses/RTO maintenance and also payments made on Saturday and Sunday and holidays.*
>
> *The Hon'ble ITAT vide order dated 12.12.2018 dismissed the appeal of the assessee and upheld the order of Ld CIT(A)*
>
> *Disallowance of loading and unloading expenses Rs. 12,12,400/-:*

During the course of assessment proceedings it was observed from income and expenditure account that the assessee has claimed transport charges received at Rs. 6,58,30,988/- and claimed transport crane higher charges at Rs.5,59,76,271/-. The breakup of this charges were called for. On verification of the submission, the assessing officer observed that the freight charges and the loading and unloading expenses were paid together. The crane charges and the octroi charges were not related to the core business of the assessee which was to hire trucks on rent and give them on rent. Therefore, the same was not reflected in the purchase register and no details regarding loading and unloading expenses of Rs.12,12,400/- was submitted. The assessee was requested to explain the allowability of such expenses. The assessee's submission was perused and the officer was of the view that the purchase register contained only summary of expenses loading and unloading charges which was at Rs. 2,83,207/-. The purchase register does not reflect expenses of Rs.12,12,400/- claimed by the assessee. Thus, the officer disallowed the unexplained expenses of Rs. 12,12,400/-.

The Ld.CIT(A) vide order dated 28.03.2014 confirmed the addition of Rs. 1,81,860/- due to non verifiability of claim of expenses and also considering the volume of freight receipt at Rs. 6.58 crores.

The Hon'ble ITAT vide order dated 12.12.2018 dismissed the appeal of the assessee and upheld the order of Ld.CIT(A)."

4. As is evident from the above the assessee is a transporter , conducting his business by hiring trucks and rent paid on account of this hiring of trucks was found in some cases to have been done in cash, in violation of section 40A(3) of the Act, leading to disallowance being made under the said section. Similarly loading and unloading expenses claimed to have been incurred by the assessee were disallowed on account of the same being non verifiable. And to the extent addition made by the AO was confirmed in appeal by the ITAT, penalty for concealment/furnishing of inaccurate particulars of income was levied on the assessee as per section 271(1)© of the Act.

5. The ld. Counsel for the assessee pointed out that the Assessing Officer levied penalty noting that, with respect to the disallowance made u/s 40A(3) of the Act, it was a clear case of concealment of income since substantial

payments had been made in violation of Section 40A(3) of the Act and an attempt was made by the assessee to pass on the same as advance; and both the ld. CIT(A) as well as ITAT had concurred with the said view in quantum appeal. That, with respect to the loading and unloading charges, he pointed out that the case of the AO for levying penalty was that the same being non-verifiable, were claimed to inflate expenses and, therefore, it was a clear case of concealment of income. Accordingly, the Assessing Officer levied penalty @ 100% of the tax sought to be evaded on the disallowance so made amounting to Rs.22,78,213/-.

6. Before the ld. CIT(A), the ld. Counsel for the assessee pointed out, that an attempt was made to explain that both the claims of the assessee were bonafidely made to explain that it was not a case fit for levy of penalty since no particulars of income had been concealed by the assessee - whether with respect to the amounts disallowed u/s 40A(3) of the Act or the loading and unloading charges disallowed. He contended that, it was pointed out to the ld. CIT(A) that all payments in violation of Section 40A(3) of the Act had been clearly disclosed in the Tax Audit Report furnished u/s 44AB of the Act along with return of income. That, it was explained that these payments had been made in violation of Section 40A(3) of the Act due to business expediency and thus was covered in the exceptions to the provisions of Section 40A(3) of the Act as find mention in Rule 6DD of the Income-tax Rules, 1962. That, with respect to the loading and unloading charges, it was pointed out that while the expenditure disallowed by the Assessing Officer was Rs.12,12,400/-, the same was sustained by the appellate authorities at Rs.1,81,860/- on a lump-sum basis only; and only for the reason that the claim was not verifiable fully; that, therefore, an ad-hoc disallowance was sustained by the appellate authorities. That, the impugned disallowance was a mere estimation and

there was no element of the assessee having concealed any particulars of income. Our attention was drawn to the submissions made by the assessee reproduced in the order of the ld. CIT(A) at page No.6 to 14.

7. Ld. Counsel for the assessee pointed out that, despite having stated so and despite having drawn attention to the various decisions of the higher judicial authorities in support of his contentions, the ld. CIT(A) reiterated the order of the Assessing Officer, without dealing with the contentions of the assessee. He pointed out that the ld. CIT(A) passed a cryptic order, merely stating that the issue is purely factual which have been examined by the ld. CIT(A) in quantum proceedings and confirmed by the ITAT; that, therefore, the assessee has concealed the particulars of income. Our attention was drawn to paragraph No.6 of the order of the ld. CIT(A) as under:-

> *"The appellant in its ground of appeal assailed the AO in levying penalty of Rs. 2278213/- u/s 271(1) (c) of the Act. The AO in penalty order u/s 271(1) (c) of the Act noted that the assessment u/s 143(3) was completed on 29.12.2011 by making disallowance u/s 40A (3) of Rs.1,77,20,947 and disallowance of loading/unloading expenses of Rs. 12,12,400/- The appellant challenged that assessment order before the CIT(A), who partially allowed the appeal. The assessee challenged the order of the CIT(A) before the Hon'ble ITAT. The Hon'ble ITAT dismissed the appeal of the assessee and upheld the order of the order of the CIT(A). The AO therefore taking into account the relief granted by the CIT(A) and the order of the Hon'ble ITAT which upheld the order of the Ld. CIT(A) initiated and levied penalty u/s 271(1)(c) of the Act and passed order imposing penalty of Rs.22,78,213/- which is 100% of the tax escaped and confirmed by the CIT(A) and confirmed by the Hon'ble ITAT*
>
> *6.1 The appellant in course of the appellate proceedings challenged the imposition of penalty u/s 271(1)(c) of the Act. Further the appellant relied on a number of case laws to support its grounds of appeal. The submission of the appellant is examined. The issue involved is purely factual and the facts are examined in details by the Ld. CIT(A) after calling for the remand report. The findings of the Ld. CIT(A) are upheld by the Hon'ble ITAT. Therefore, the assessee had concealed the income which had been proved. In view of the above the action of the AO in levying penalty u/s 271(1)(c) of the Act of Rs. 2278213/- is upheld. The ground of appeal is dismissed."*

8. The ld. Counsel for the assessee reiterated the contentions made before the ld. CIT(A) before us and drew our attention to the same recorded in the order of the ld. CIT(A) in support.

9. Ld. DR, however, relied on the order of the ld. CIT(A).

10. We have heard both the parties and have gone through the orders of the authorities below, as also the judicial decisions relied upon before us. The issue to be adjudicated is the levy of penalty u/s 271(1)(c) of the Act on account of concealment of income derived from the following disallowances made in the case of the assessee which stood confirmed up to the ITAT:-

(i) Disallowance u/s 40A(3) of Rs.1,77,20,947/-, sustained by the Ld. CIT(A) and confirmed by the ITAT to Rs.65,20,741/-

(ii) Disallowance of loading and unloading expenses of Rs.12,12,400/- sustained by the Ld. CIT(A) and confirmed by the ITAT to Rs.1,81,860/-.

11. The assessee has heavily relied on the submissions made before the ld. CIT(A) for contending that no penalty was leviable on the impugned disallowances. It is, therefore, considered necessary to reproduce the submissions made by the assessee to the ld. CIT(A). With respect to the penalty levied on the disallowance made u/s 40A(3) of the Act amounting to Rs.1,77,20,947/-, the submissions are reproduced at page Nos. 6 to 8 of his order as under:-

> *"2.1.1 The Appellant places on record that major portion of the addition made by the AO and partly sustained by the two appellate authorities is on account of disallowance of certain transportation expenses paid and incurred in the normal course of business carried out by him. It has been an admitted and undisputed fact that all these expenses are not only recorded in the books of account regularly maintained and subjected to audit, but are also supported*

by proper documentary evidences. The documents filed at various levels in quantum proceedings clearly prove and substantiate the fact that these expenses were incurred in connection with specific transportation trips which originated from a specific location and terminated at the other. These documents also contained full and complete details of not only the names of the payees but also the detailed mention as to the specific purposes for which the same were incurred. All these and other details filed by the Appellant before the AO and the appellate authorities in quantum proceedings have never been disputed - either by the Revenue or even by the Tribunal. The Appellant further places on record that the books of account regularly maintained and the documentary evidences supporting the same were verified by the auditors who issued an unqualified audit report under section 44AB of the Act categorically certifying in Form No.3CD as to there being several transactions of cash payments in excess of the prescribed threshold limit and as to these having been incurred on account of business necessity, albeit based on the explanation given by the Appellant. Copy of the relevant pages of the tax audit report is attached herewith. In fact, it was predominantly on the basis of this certification of the tax auditor which triggered the AO to look into these transactions which in turn resulted in the consequential disallowance. No penalty is thus leviable even on this score as there was absolutely no concealment of any of the material facts right from the stage of getting the accounts audited and furnishing of the corresponding return of income on the basis of the same.

2.1.2 In the context of what is stated above, the Appellant draws specific attention to Rule 6DD of the Income-tax Rules, 1962 carving out the exceptions to section 40A (3) of the Act, thus not requiring any adverse inference to be drawn even if any expenditure beyond the prescribed threshold limit is paid for other than by the specified modes. The Appellant submits that the exceptions have been carved out for ensuring that while trying to make the economy 'cashless' to the extent possible, the same does not adversely affect the legitimate and genuine transactions which may be required to be incurred in cash considering several circumstances as specified in the rules. Even the proviso appearing after section 40A(3A) specifically states that if the payments as envisaged under sub-sections (3) and (3A) of section 40A of the Act are made other than by the specified modes having regard inter alia to business expediency and other relevant factors, no disallowance under either of these sub- sections is required to be made. Similarly, Rule 6DD of the Income-tax Rules, 1962 carves out several exceptions inter alia to section 40A (3) of the Act wherein despite the payments having been made beyond the prescribed threshold limit other than by specified modes, no disallowance is required to be made. Considering all these provisions of law, it is quite clear that before deciding as to whether a particular expenditure having been paid

other than by specified modes is liable to be subjected to disallowance under section 40A (3) of the Act or the same is covered under any of such exceptions, the circumstances in which the same is incurred are required to be ascertained. If the same is paid on account of say business expediency, no such disallowance is warranted. The Appellant submits that certain exceptions like 'business expediency' as carved out in the law are clearly subjective in nature and there can always be a difference of opinion between two persons in this regard. This fact gets substantiated by observing the development of the case in the quantum proceedings wherein the AO thought that every single expenditure in excess of the prescribed threshold limit aggregating to Rs. 1,77,20,947/- was in violation of the provisions of section 40A (3) of the Act and that nothing was thus covered under the exceptions. Contrary to her view, the CIT(A) in a very elaborated order separated this aggregate expenditure into two parts (i) an aggregate sum of Rs. 1,12,00,206/- covered under the exceptions in view of several reasons as mentioned in the body of the order; and (ii) the balance figure of Rs.65,20,741/- not covered under the exceptions, thus liable for disallowance under section 40A (3) of the Act. Even the Tribunal confirmed the view of the first appellate authority for the reasons stated in the body of the order. This aspect is required to be considered in the undisputed factual backdrop that the Appellant is engaged in the business of transportation and every single expenditure subject to disallowance was in relation to transportation payments, which were disbursed to the truck drivers undertaking the transportation of the contracted goods of the customers from one place to the other across the length and breadth of the Country and it was accordingly not possible for the Appellant every time to make payment by the specified modes, as the same would have resulted either in non-crystallization of the transportation contracts or in substantial delay in their execution. The Appellant was thus of the legitimate, valid and bona fide opinion (which was fully supported by the independent tax auditor and substantially supported by both the appellate authorities, as stated above) that all these payments were very much covered under the exceptions and nothing was thus required to be disallowed while computing the income chargeable to tax under section 28 of the Act.

2.1.3 In the backdrop of what is stated above, the Appellant submits that whenever certain decisions are required to be based on subjective satisfaction of a person and whenever such subjective satisfaction is arrived at on the basis of something that has not been disproved, mere fact of such subjective satisfaction not having been accepted at the assessment/ appellate stage, the same cannot be treated as even having remotely satisfied the charge of concealment of income for which the penalty has been levied.

2.1.4 In the context of what is stated above, the Appellant relies on the ratio of the following judgments wherein it has expressly been held that that penalty cannot be imposed in respect of the additions made (or sustained) on account of notional disallowances:

- *Vidyut Metallics Ltd. vs. DCIT- (2001) 116 Taxman 275-Mumbai ITAT;*
- *Shri Suresh Shivlal Bhasin vs. ACIT ITA Nos. 1705 & 1707/Mum/2017 - Mumbai ITAT."*

12. A perusal of the above reveals that the primary contention of the ld. Counsel for the assessee with regard to the disallowance made u/s 40A(3) of the Act not inviting any levy of penalty was that:-

- The assessee had disclosed all particulars relating to payments made in violation of Section 40A(3) of the Act in the Tax Audit Report furnished u/s 44AB of the Act along with the return of income. That, accordingly, there could be no charge of concealing or furnishing of inaccurate particulars by the assesse.

- That the assessee had bonafidely believed that the cash payments being made to meet business exigencies were covered in the exceptions carved out to section 40(A)(3) of the Act, in Rule 6DD of the Income Tax Rules, 1962. The circumstances in which these payments were made in cash in violation of the provisions of Section 40A(3) of the Act were explained stating that the assessee being engaged in the business of transportation, wherein he conducted his business by hiring trucks and the transportation being done across the length and breadth of the country and it was not possible every time to make payment by the specified modes since it would have resulted either in non-crystallization of the transportation contracts or in substantial delay in their execution. That, in such business exigencies,

therefore, the payment had been made in violation of the provisions of Section 40A(3) of the Act in cash in excess of Rs.20,000/-.

- That mere disallowance of claim of expense would not attract levy of penalty.

13. We have considered the contentions of the ld. Counsel for the assessee and we find merit in the same ,that the mere disallowance of expenses u/s 40A(3) of the Act in the present case would not invite the levy of penalty for concealing or furnishing of inaccurate particulars of income. It is an undisputed fact that all particulars relating to payments made in violation of the provisions of Section 40A(3) of the Act were disclosed by the assessee in its Tax Audit Report filed in terms of section 44AB of the Act, along with the return of income. No discrepancy has been pointed out by the Revenue in the contention of the assessee that he harboured a bona fide belief that these payments having been made in compelling business circumstances, they fell in the exceptions to the provisions of Section 40A(3) as brought out in Rule 6DD of the Income-tax Rules, 1962. It is not the case of the Revenue that the explanation furnished by the assessee for bonafidely believing that these payments were excluded from the purview of Section 40A(3) of the Act were found to be false.

14. It is evident from the above that there was no concealment of the particulars of income relating to payments made in violation of Section 40A(3) of the Act by the assessee. We completely agree with the ld. Counsel for the assessee that it is simply a case of levying penalty on disallowance of claim of assessee, when the assessee admittedly had disclosed all particulars relating to the issue of payments made in violation of section 40A(3) of the

Act and had also bonafidely believed the same as not covered under the said section.

15. The assessee we hold ,cannot be charged with having concealed or furnished inaccurate particulars of income so as to impose penalty u/s 271(1)(c) of the Act. Law in this regard is settled by the Hon'ble Apex Court in the case of Pricewaterhousecoopers Pvt. Ltd vs C.I.T, [2012] 348 ITR 306 (SC) wherein in identical set of facts where the assessee was noted to have disclosed all particulars of expense and the assesses explanation for not suo moto disallowing the same as being done by mistake, was found bonafide by the court, penalty levied u/s 271(1)(c) of the Act was deleted by the Apex court. Even otherwise, during the course of hearing before us, the ld. Counsel for the assessee drew our attention to the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Zoom Communication (P.) Ltd., reported in [2010] 327 ITR 510 (Delhi), which, he pointed out, though was relied upon by the Assessing Officer in the present case while levying penalty, it actually supported the assessee's case. He drew our attention to the findings of the Hon'ble High Court in the said case holding that as long as the assessee has not concealed any material fact or any factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that he either substantiates the explanation offered by him or the explanation even if not substantiated is found to be bona fide. The said decision we agree with the Ld. Counsel for the assessee supports the case of the assessee for levying no penalty.

16. Accordingly, we hold that the levy of penalty on the addition made on account of disallowance made u/s 40A(3) of the Act is not sustainable and we direct deletion of the same.

17. We regard to the addition made by disallowing loading and unloading expenses, the contention made by the assessee before the ld. CIT(A) is as under:-

> *"2.2.1 In so far as the penalty levied in respect of the other disallowance on account of loading and unloading expenses is concerned, suffice is to state that while this expenditure was disallowed at Rs. 12,12,400/- by the AO without appreciating the facts of the case, as very much cross-verifiable from the books of account maintained, the same was thereafter sustained at Rs.1,81,800/- on lumpsum basis by both the appellate authorities. This can be evidenced from the categorical finding of the first appellate authority appearing on Page No.95 of the order. Relevant portion of the same is reproduced herein below:*
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> > *"4.10 Therefore, due to non-verifiability of the claims fully, in the interest of justice and also considering the volume of gross freight receipts at Rs.6.58 crores, it would be reasonable to disallow 15% of the aforesaid expenses of Rs. 12,12,400/- on lumpsum basis which comes to Rs. 1,81,800/- and the same is confirmed. The appellant gets relief of Rs. 10,30,540/- on this account. Thus, this ground of appeal is 2.2.2 Reference in this context may further be had to the reasoning adopted by the Hon'ble Tribunal Bench while confirming the action of the CIT(A), which has at paragraph 9 of the order held as under.*
> >
> > *9. We have heard rival contention on this issue and noticed that it is undisputed fact that these expenses were made at the loading and unloading destinations to small workers in cash on self-made vouchers because of nature of expenses, it is difficult to check and verify such payment, therefore, due to non-verifiable nature of these expenses, we observed that Id. CIT(A) has restricted the said disallowance to a very reasonable level of 15% of the aforesaid expenses of Rs. 12,12,400/- on lump sum basis. Considering the reasonableness of the disallowance made by the Id. CIT(A) on the basis of non-verifiable nature of expenses, we do not find any merit in the appeal of the assessee, therefore, the same is dismissed."*
>
> *2.2.3 From the clear observation of the both the appellate authorities in their respective orders in quantum, as reproduced above, it is very clear that the addition is only based on estimation and there is clearly no element of the Appellant having concealed the income. There is thus absolutely no justification in the action of the AO in levying penalty under section 271(1)(c) of the Act in this regard.*

> *2.2.4 In the context of what is stated above, the Appellant relies on the ratio of the following judgments wherein it has clearly been held that where an addition is made (or sustained) on lump sum/ estimate basis, the question of levying penalty there against clearly does not arise, as there is no absolute finding as to the assessee having actually concealed his income.*
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> - *ITO vs. Bombaywala Readymade Stores (2015) 55 taxmann.com 258 Gujarat HC;*
> - *CIT vs. Aero Traders (P.) Ltd. (2010) 322 ITR 316 - Delhi HC;*
> - *CIT vs. Arjun Prasad Ajit Kumar- (2008) 214 CTR 355-Allahabad HC;*
> - *Surat Fashions Ltd. vs. ACIT-ITA No.3368/AHD/2008-Ahmedabad ITAT:*
> - *ETCO Profiles (P.) Ltd. vs. ACIT (2015) 61 taxmann.com 470 – Mumbai-ITAT*
> - *Narayan Singh J. Deora Vs. ACIT-ITA No.5895/Mum/2010-Mumbai ITAT*
> - *ACIT Vs. Allied Construction – (2008) 26 SOT 50 – Delhi ITAT*
> - *ITO Vs. Ravi Khurana – (2008) 174 Taxman 26 – Delhi ITAT"*

18. On going through the above, we find that the disallowance made on account of loading and unloading charges was a mere ad-hoc disallowance. The disallowance was not based on any finding of fact that the assessee had claimed bogus expenses of loading and unloading. It was made merely because the claims were not fully verifiable and therefore it was considered fit to disallow 15% of the expenses incurred by the assessee on lump-sum basis . Also while holding that the expenses not verifiable, the ITAT in its order had gone on to note that these expenses of loading and unloading were made to small workers in cash on self-made vouchers, and because of the nature of these expenses, it was difficult to check and verify them. It is evident that again it is not a case of finding the assessee to have claimed bogus expenses. It is merely because of the nature of the expenses having been incurred in relation to small workers on self-made cash vouchers that it was

found that they were not completely verifiable. There is no doubt that such disallowances do not tantamount to the assessee having concealed or furnished any inaccurate particulars of income. They are mere ad-hoc disallowances, which, Courts have repeatedly held, do not attract any levy of penalty. All the decisions cited by the assessee before the ld. CIT(A) support the case of the assessee. In view of the above, we hold that the penalty levied on loading and unloading expenses disallowed is also not sustainable and we direct deletion of the same.

In view of the above, the penalty levied by the AO of Rs.22,78,213/- is deleted.

19. In effect, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 15/07/2024 at Ahmedabad.

Sd/- **Sd/-**

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
(टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

Ahmedabad, dated 15/07/2024

*BTK**

<u>आदेश की प्रतिलिपि ग्रेषित</u>/<u>Copy of the Order forwarded to</u> :

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

आदेशानुसार/BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad