

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5478Del/2017
(Assessment Year : 2010-11)

The DCIT Circle 16(2), New Delhi PAN : AAACM6334J	Vs.	M/s. Minerals Managements Services India Pvt. Ltd. 1104, 11 th Floor, Hemkunt Chamber, Nehru Place New Delhi-110019
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Salil Kappor, Adv. And Shri Sumit Lalchandani, Adv.
Revenue by	Shri N.C.Swain, CIT-DR

Date of hearing:	25.05.2022
Date of Pronouncement:	15.06.2022

ORDER

PER ANUBHAV SHARMA, JM:

The revenue has filed this appeal against the order dated 02.06.2017 passed by the Commissioner of Income Tax (Appeals)-6, Delhi deleting the penalty levied by the Assessing officer u/s 271(1)(c) of the Income Tax Act, 1961.

2. The facts in brief are that during the course of assessment proceeding, it was seen that the assessee had claimed depreciation of Rs.8,38,98,017. When the assessee was asked as to why rental income should not be added. The assessee submitted that the building is dilapidated and unsafe for occupation. Again when asked why depreciation should not be disallowed, the assessee submitted that the building was being used for business purposes for conducting meetings of Board of Directors. Ld AO observed that a meeting of Board of Directors cannot be held in a building which by the assessee's own submissions "is unsafe to occupy". Ld AO held that it is very clear that the assessee is misrepresenting itself. Ld AO also observed that from perusal of sale deed dated 23/08/2006 by which various parties had sold their land to the assessee company, it is very clear that no description had been given relating to any valuable structure. Hence, he held that dilapidated structure was of no worth or value on which depreciation can be claimed. These structures had also been demolished in 2009. Therefore, he concluded that no depreciation could be allowed on such property. He also considered that the depreciation claimed on the Residential Building had also been disallowed in the previous three assessment years being 2007-08, 2008-09 & 2009-10 by Ld. CIT(A) IX, New Delhi.

2.1 During the assessment proceeding, the assessee had claimed an amount of Rs. 18,08,26,334/- as interest expense. The assessee was asked to explain as to why the amount of interest be not disallowed. The assessee vide its letter dated 23/01/2013 furnished reply. Subsequently to the letter dated 23/01/2013, the assessee furnished another letter dated 13/02/2013, withdrawing its claim of interest of Rs. 18,08,26,334/- as claimed in the return of income for the A.Y. 2010-11 .However in letter 13/02/2013 the

assessee had itself withdrawn the claim of interest amounting to Rs. 18,08,26,334/- for the A.Y. 2010-11 by furnishing revised computation of income. Hence, the same was disallowed and added to the total income of the assessee.

2.2 Based upon above and that during the penalty proceedings, the assessee has not brought any evidence so as to counter the additions made therein the assessment order. Therefore holding it to be a case of concealment of the income amounting to Rs. 26,47,24,351/- and assessee was held liable for penalty u/s 271(1)(c).

2.3 However, Ld. CIT(A) had set aside the penalty levied by Ld. AO with the following finding :-

“ It has likewise been held in decisions of various High Courts that where facts are fully disclosed, penalty under section 271(1)(c) of IT Act cannot be imposed for furnishing of inaccurate particulars of income. The records/ orders also suggests that it was, on the basis of complete information/ documents filed by the appellant, that the assessing officer disallowed the claim of depreciation based on the difference of opinion regarding interpretation of section 32/36(l)(iii) of IT Act. It is settled legal position that no penalty could be levied where the bonafide claim of the appellant has been disallowed by the assessing officer on difference of opinion based on legal position.

Further the assessing officer, in the impugned order, has merely stated that if the case of the appellant would not have been selected for scrutiny, the facts would not have come to the notice of the department and the same would have escaped the eyes of the Department. The assessing

officer relied on the decision of CIT v. Zoom Communications Pvt. Ltd.: 327 ITR 51 (Del.). The facts in the case of Zoom Communications were completely different inasmuch as the claims, inter-alia, deduction of income tax paid/ equipment's written off made by the assessee were patently erroneous and had no footings to stand at all. The facts of that case cannot be compared with the present case. The said decision has also been dealt/ distinguished in the following case laws rendered by the jurisdictional Delhi High Court:

- Karan Raghav Exports (P) Ltd. v. CIT: 349 ITR 112*
- Kanchenjunga Advertising (P) Ltd. v. CIT: 340 ITR 595*
- CIT v. Societex: 259 CTR 325*
- CIT v. Kas Movie (P) Ltd.: 207 Taxman 183*
- CIT v. Madhushree Gupta: 216 Taxman 65 (Mag.)*

Considering the entirety of facts and legal position discussed above, penalty levied qua disallowance of depreciation and interest stands deleted.”

2.4 However Ld. CIT(A) did not sustain the grounds of appeal with regard to claim that the impugned penalty order was barred by limitation or that the penalty was levied in absence of satisfaction recorded by Assessing officer.

3. Now, the revenue has approached the Tribunal raising following grounds :-

1. *Whether in facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the penalty of Rs. 8,99,79,806/- u/s 271(1)(c) of the Income Tax Act (the Act) Imposed by the Assessing*

Officer (the AO) by ignoring finding of facts recorded by the AO that the assessee had made patently wrong claim of depreciation on residential property and patently wrong claim of deduction of interest which was capitalized in preceding assessment year as revenue expenditure?

2. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty of Rs. 8,99,79,806/- u/s 271(1)(c) of the ignoring a fact that the assessee had withdrawn patently wrong claim of deduction of depreciation on residential property by filing revised computation only after the case was taken up for scrutiny by issue of notice u/s143(2) of the Act?*

3. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty of Rs. 8,99,79,806/- u/s 271(1)(c) of the Act by ignoring the fact that the assessee had made patently wrong claim of deduction of interest by deliberately changing the character of interest payment to create a legal facade that it was disputed issue?*

4. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting penalty only on the ground that there was difference in opinion between the appellate authority with respect to a part of disallowance leading to penalty even when the assessee had failed to discharge its onus as stipulated in explanation 1 to u/s 271(1)(c) of the Act?*

5. *Whether in facts and circumstances of the case, Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of earlier orders in the assessee's own case despite the fact that principle of res-judicate is not applicable to Income Tax proceedings as each assessment year is a separate proceedings year?*

6. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not upholding the penalty u/s 271(1)(c) of the Act imposed by the Assessing Officer by ignoring the fact that the assessee had taken a chance by making a patently incorrect and unsubstantially claim and the decision of Hon'ble jurisdictional High Court in case of CIT Vs Zoom communication Pvt. Limited (2010) 327 ITR 510, CIT vs NG Technologies Limited (2015)370 ITR 7, CIT Vs Escorts Finance Limited (2010) 328 ITR 44 and CIT Vs Harparshad and Company Limited (2010) 328 ITR 53?*

7. *That the appellant craves leave to add, amend, alter or forgo any*

ground/(s) of appeal either before or at the time of hearing of the appeal.

4. Heard and perused the record.

5. On behalf of the assessee in application under Rule 27 of the Income Tax Act (Appellate Tribunal) Rules, 1963 has been filed to submit that opportunity be given to support the Ld. CIT(A) on the following grounds :-

1. *That in view of the facts and circumstances of the case and in law, penalty initiated vide notice issued by the Assessing Officer under section 274 r.w.s. 271 of the Act dated 25.2.2013 and the order passed u/s 271(l)(c) of the Act are illegal, bad in law and without jurisdiction since the notice issued is without any specific charge*

2. *That the penalty order passed u/s 271(l)(c) dated 09.02.2015 is illegal, bad in law and without jurisdiction as initiation of penalty by itself is bad in law and without jurisdiction.*

5.1 Ld. Counsel relied following judgments to contend that assessee has a right to raise grounds touching the merits of the case. The same could not be disputed by Revenue :-

“1. *DCIT vs. M/s. Casby Logistics Pvt. Ltd. , ITA No. 1949 & 1950/MUM/2016 (ITAT Mumbai)*

2. *ITO vs. Smt. Gurinder Kaur , [2006] 102 ITD 189 (ITAT Delhi)*

3. *Hukumchand Mills Ltd. Vs. CIT [1967] 63 ITR 232 (SC)*

4. *DCIT Vs. Metro Tyres Pvt. Ltd., ITA No. 2873/Del/2016”*

6. It is submitted on behalf of the assessee that the ld. CIT(A) has failed to appreciate that the notice dated 25.02.2013 issued u/s 274 r.w.s.271(1)(c) of the Act is not legally sustainable as it is not disclosed as to if the notice is issued for furnishing inaccurate particulars or concealment of particular income. It was contended that it is now settled proposition of law that the

notice has to give with categoric indication as to for which specific violation the notice is issued and reliance in this regard is placed on the judgment :-

- “1. *Pr. CIT Vs. Sahara India Life Insurance Company Ltd. , ITA No. 475 of 2019 (Delhi HC)*
2. *CIT Vs. Virgo Marketing P. Ltd., [2008] 171 Taxman 156 (Delhi)*
3. *CIT Vs. Veerabhadrapa Sangappa & Co. (SLP Dismissal) ,SLP (C) No. 13898/2014 (SC)*
4. *CIT vs. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Karnataka)*
5. *Avinash Kumar Setia Vs. DCIT , ITA No. 1814/D/2015 (ITAT Delhi)*
6. *Shri Harmendar Singh Vs. DCIT, ITA No. 2627/D/2017 and others (ITAT Delhi)*
7. *Bengali Sweet Centre Vs. ACIT , ITA No. 2068 & 2069/D/2014 (ITAT Delhi)*
8. *Deloitte Haskins and Sells vs. DCIT, ITA No. 675/Del/2015*
9. *M/s. QL2 Software India Pvt. Ltd. Vs. ITO, ITA No. 4805/Del/2016”*

Further it was submitted on behalf of the assessee that on merits of ld. CIT(A) has rightly deleted the penalty.

7. On the other hand, ld. DR submitted that there was an apparent false claim of depreciation in regard to a dilapidated building. It was submitted that Ld. AO had given a finding in the assessment order that assessee company furnished inaccurate particulars and accordingly levied the penalty.

8. Giving thoughtful consideration to the matter on record in regard to the grounds raised by the assessee by virtue of Rule 27 of the Rules of 1963 it can be observed the Ld. CIT(A) has tried to square up the claim of assessee on the basis that directions to initiate penalty proceedings in the assessment order is a sufficient compliance of recording of satisfaction in terms Section

271(1)(c) of the Act. However, what transpires from record is that in the assessment order, the Ld. AO had concluded the assessment order by following observations in para no. 9 :-

“9. Assessed at Income of Rs. 3,74,62,030/-. Credit for prepaid taxes is given. Requisite documents are issued. Interest is charged u/s 234A, 234B, 234C & 234D as per rules. Penalty proceedings under section 271(1)(C) of the Income Tax Act, 1961 are hereby initiated for which notice u/s 274 is issued separately.”

9. This makes it clear that there was “no specific conclusion” as to if there was concealment of income or submission of inaccurate income. At the same time in the body of assessment order while making addition in para no. 2.15 & 3.3 the AO had mentioned that assessee company had furnished “inaccurate particulars” while in the notice dated 25.02.2013 as reproduced in the penalty order dated 09.02.2015 itself there was no specific indication as to if the levy of penalty is called upon to be explained for concealment of income or furnishing of inaccurate particulars.

10. Further it can be observed that on page no. 2 para 2 of the penalty order, the Ld. AO observed that *“also, during the present penalty proceedings, the AR of the assessee has not brought any evidences so as to counter the additions made therein the assessment order. Thus, the assessee has not discharged the onus cast upon him and therefore, conceal the income amounting to Rs. 26,47,24,351/- and is liable for penalty u/s 271(1)(c)”*.

11. Thus, in the assessment order and penalty order there is apparent ambiguity as to what was the basic ground for penalty. On other hand it is also established that the notice issued u/s 274 r.w.s. 271(1)(c) of the Act was

defective as it was not clear as which limb the penalty was levied. Reliance in this regard can be placed on the judgment of Hon'ble Bombay High Court in Commissioner of Income Tax -11 vs. Shri Samson Perinchery, Income Tax Appeal No. 1154 of 2014, 953 of 2014, 1097 of 2014 & 1226 of 2014 and other judgment relied by the counsel for assessee. Thus, the ground raised by the assessee by virtue of Rule 27 of the Rules 1963 are sustained and the notice dated 25.02.2013 is held to be invalid and the penalty proceedings order dated 09.02.2015 is set aside.

12. As a consequence of aforesaid, there is no substance left in the merits of ground of appeal raised by the revenue and **the appeal of revenue is dismissed.**

Order pronounced in the open court on 15th June, 2022.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 15 .06.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI