

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**I.T.A. No. 5374/Del/2012  
Assessment Year: 2007-08**

M/s Shruti Fastners Ltd.  
1666-B, Govind Puri Extension,  
New Delhi – 110 019

Vs.

DCIT, Circle-8(1)  
New Delhi

**(PAN: AAACS2175H)  
(APPELLANT)**

**(RESPONDENT)**

**Assessee by:** Shri Sandeep Sapra, Adv.

**Revenue by:** Shri N.K. Bansal, Sr. DR

**ORDER**

**PER H.S. SIDHU, JM**

This appeal is filed by the Assessee against the Order dated 28.8.2012 passed by the Ld. CIT(A)-XI, New Delhi relating to Assessment Year 2007-08 on the following grounds:-

1. That the penalty order dated 23/12/2011 as passed by the Ld. Dy. CIT thereby levying a penalty of Rs.4,68,870/- u/s 271(1)(c) of the I.T. Act being arbitrary, unjust and illegal ought to have been cancelled by the Ld. CIT(A).

Various observations made by the authorities below in their respective orders are either incorrect or are untenable. The Appellant had not

furnished inaccurate particulars of its income with a view to conceal the same. The submissions made before the authorities below against imposition of penalty had either been ignored or had not been appreciated properly.

2. That the following findings of the CIT(A) in last para at page 11 - 12 of her appellate order are factually incorrect and untenable:

"It is therefore clear from the above facts that the appellant had resorted to concealment in his' figure of inventory. The CIT(A) has stated in his order that there was discrepancy quantity issue in the inventory and the said matter was not reflected by the appellant either before the AO or before the CIT(A).

It is apparent that had the survey not taken place, the concealment in the inventory resorted to by the appellant would not have been detected. The appellant had deliberately undervalued its inventory with an intention to conceal its income.

The Appellant had not at all resorted to concealment in the figure of inventory as assumed Illy the authorities below. In fact, there was no discrepancy in the quantity

and the Appellant had made detailed submissions to disprove the same which were ignored or not given due weight.

3. That the Appellant had not at all furnished inaccurate particulars of its income as assumed by the authorities below in their respective orders.
4. That the penalty as levied being wholly illegal and unjustified, deserve to be deleted. At any rate, without prejudice, the penalty as levied is very excessive.
5. That the Appellant reserves its right to add, amend/modify the grounds of appeal.

2. The brief facts of the case are that the assessee filed the return declaring total income of Rs. 26,58,050/- on 31.10.2007 and the same was processed u/s. 143(1) of the I.T. Act, 1961. Subsequently, the case was selected for scrutiny and the assessment was completed u/s. 143(3) of the Act vide order dated 14.12.2009 computing the total income at Rs. 81,18,880/-. During the course of assessment proceedings two additions / disallowance i.e. (i) on account of closing stock of Rs. 54,47,326/- and (ii) on account of non exempt income of dividend amounting to Rs. 13,500/- were made and penalty proceedings u/s. 271(1)(c) were also initiated in the assessment order itself.

2.1 Against the order of the AO, assessee preferred an appeal before the Ld. CIT(A) who vide his impugned order dated 14.7.2010 confirmed

the additions / disallowances to the extent of Rs. 13,92,958/- thereby giving the assessee a relief of Rs. 40,54,368/-.

2.2 Against the appellate order, the Assessee as well as the Department went in Appeal before the ITAT and the ITAT, Delhi vide its common order dated 31.3.2011 passed in ITA No. 4219/Del/2010 (Assessee's Appeal) and ITA No. 4518/Del/2010 (Revenue's Appeal) has upheld the order of the Ld. CIT(A) and dismissed both the appeals by holding as under:-

*"Under the circumstances, Ld. CIT(A) observed that estimate is needed to be made while the AO had applied Rs. 59.48 rate, appellant offered Rs. 33.56 per meter. Ld. CIT(A) has proceeded to apply the rate of Rs. 37.96. In our considered opinion, in absence of direct evidences estimate is inevitable on the facts and circumstances of the case. In our considered opinion, Ld. CIT(A) has made a reasonable order, which does not need any interference on our part. Accordingly, we uphold the order of the Ld. CIT(A)."*

2.3 Against the order of the ITAT, the Revenue filed further Appeal before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court while adjudicating the ITA No. 1199/2011 filed by the Revenue has observed as under:-

*"The Assessing Officer noticed that during survey proceedings, the assessee has surrendered an amount of Rs. 35.10 lacs for taxation as additional income for financial year 2006-07. There is no dispute about the same. The dispute pertains to value of zip fastener mentioned at serial no. 26 and 47 and 154. The Assessing Officer had taken the value of the zip fasteners of RS. 59.48 per meter. The assessee's contention was that this figure was on the higher side and not substantiated by any material or evidence. After examining the factual aspects and evidence the CIT(A) valued the zip fasteners at Rs. 37.96 per meter. The said order has been upheld by the ITAT. The reasons and grounds mentioned by the two appellate authorities are not perverse. It is a reasonable view on the facts, material and evidence. The reasoning does not require interference in an appeal u/s. 260A of the Income Tax Act, 1961."*

2.4 Taking into account the order of the appellate authorities, the assessee was served with a penalty notice u/s. 271(1)(c) dated 05.12.2011 by the AO. Keeping in view the facts of the case and the findings of the appellate authorities Rs. 13,92,958/- was treated as unexplained income of the assessee. A penalty of Rs. 4,68,870/- was imposed u/s. 271(1)(c) of the I.T. Act, 1961 vide order dated 23.12.2011.

3. Against the above Penalty Order dated 23.12.2011 passed by the Assessing Officer, assessee appealed before the Ld. First Appellate Authority, who vide impugned order dated 28.8.2012 dismissed the appeal of the assessee.

4. Against the above order of the Ld. CIT(A) dated 28.8.2012, assessee is in appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee, Sh. Sandeep Sapra filed a Chart showing that addition of Rs.54,47,326/- had been made by the AO by estimating the value of three items of stock. In this connection, he referred to inventory of stock prepared during the course of survey conducted on 07/09/2006, copy placed at pages 82-90 of the paper book particularly inventory at Sr. No. 26, 47 and 154 at pages 86 and 88 to prove that the AO and CIT(A) had only estimated the value of such three items.

5.1 The Ld. Counsel of the assessee further referred to assessment order passed u/s 143(3) placed at pages 30-35 of the paper book and argued that the addition of Rs.54,47,326/- had been made by the AO on account of alleged difference in the valuation of three items of stock.

5.2 The Ld. Counsel of the assessee also referred to CIT(A)'s order in quantum appeal placed at pages 127-133 of the paper book and pointed out that the observations of the CIT(A) vide para.1 at page 6 that there was discrepancy quantity-wise in the inventory and the said matter "had not been refuted by the Appellant either before the AO or before the

CIT(A) are factually incorrect. According to AR, the CIT(A) did not dispute the stock quantity and vide para 2.8 at page 6, the CIT(A) only estimated the value of three items @Rs.33.56 per mtr. instead Rs.59.48 per mtr. as estimated by the AO.

5.3 He further submitted that against the Ld. CIT(A)'s order, both the Assessee and Revenue went in appeal and ITAT vide order dated 31/03/2011, upheld the order of CIT(A) by dismissing appeals of both the Assessee and the Revenue. Copy of ITAT order is placed at pages 22-29 of the paper book. The revenue filed appeal before the Hon'ble Delhi High Court against ITAT order dated 31/03/2011, which was dismissed by Hon'ble High Court vide order dated 04/11/2011 and relied on the same.

5.4 The Ld. Counsel of the assessee further pointed out that the Hon'ble High Court order dated 04/11/2011 was also considered by the AO while levying penalty in which the above observations of the Hon'ble High Court have also been reproduced. He vehemently argued that the addition had been made only on account of dispute pertaining to value of zip fasteners mentioned at serial No.26 and 47 and 154 as observed by the Hon'ble High Court and that there was no discrepancy with regard to the quantity of such items. He further argued that the impugned penalty order as well as the Ld. CIT(A)'s order under appeal also did not dispute the quantity of such items.

5.5 He further argued that the findings of the AO for levying penalty (last para of page 2 of impugned order) that the Assessee failed to offer an explanation and hence, Explanation 1 to section 271(1)(c) was

squarely attracted and the addition made in the assessment order in computing the income of the assessee shall be deemed to represent the income in respect of which particulars have been concealed is factually incorrect and legally untenable as explanation alongwith documentary evidence had been filed to substantiate the value of the three items because of which the AO estimated the value of three items at Rs.59.48 per mtr instead of Rs.191.57 per mtr estimated by the survey team. Thereafter, the CIT(A) estimated the value of three items at Rs.37.96 per mtr instead of Rs.59.48 per mtr estimated by the AO.

5.6 The Ld. Counsel of the assessee has also placed reliance on the judgment of the Hon'ble Allahabad High Court, Lucknow Bench in the case of Naresh Chand Agarwal vs. CIT 357 ITR 514, in which their Lordship after referring to the Supreme Court judgment of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158, and following the judgment in the case of CIT vs. Arjun Prasad Ajit Kumar 214 CTR 355 (Allahabad H.C.) has observed that no penalty u/s 271(1)(c) can be imposed with reference to the addition made on estimation basis. On the strength of these judgments, the counsel argued that the penalty of Rs.4,68,870/- under appeal is illegal and therefore deserves to be cancelled.

6. On the other hand, the Ld. DR, Sh. N.K. Bansal, did not controvert the arguments of the Ld. AR of the assessee that addition was made only on account estimation of value of three items in the stock inventory and not on account of any discrepancy in the quantity. However, the Ld. DR vehemently argued that the Assessee had failed to prove the value of the

three items of stock and therefore, penalty levied on estimate made on such three items was justified and relied upon the orders of the revenue authorities.

7. In response, Ld. AR has placed reliance on written submissions filed before CIT(A) in quantum appeal copy placed at pages 40-43 and purchase invoices placed at pages 79-81 of the paper book filed to substantiate value of three items of stock shown by the Assessee and argued for cancellation of penalty under appeal.

8. We have heard both the parties and perused the records, especially the orders of the authorities below and the Chart filed by the Ld. Counsel of the assessee, we find that the Chart filed by the Ld. Counsel of the assessee shows that addition of Rs.54,47,326/- had been made by the AO by estimating the value of three items of stock. In this behalf, the inventory of stock prepared during the course of survey conducted on 07/09/2006, copy placed at pages 82-90 of the paper book particularly inventory at Sr. No. 26, 47 and 154 at pages 86 and 88 proves that the AO and Ld. CIT(A) had only estimated the value of such three items as under:

<b>Quantity of three items found during the course of survey on 07/09/2006</b>	<b>Rate per sq.mtr. shown by the assessee</b>	<b>Rate estimated by the AO</b>	<b>Rate estimated by CIT(A)</b>
43 x 2000 = 86,000 (mtrs.) (refer to page 86)	Rs. 33.56 (refer to page 86)	Rs. 59.48	Rs. 37.96
100 x 1000 =	Rs. 27.97	Rs. 59.48	Rs. 37.96

1,00,000 (mtrs.) (refer to page 86)	(refer to page 86)		
12 x 200 = 2,400 (mtrs.) (refer to page 88)	Rs. 3.32 (refer to page 88)	Rs. 59.48	Rs. 37.96

8.1 We further find that the assessment order passed u/s 143(3) of the I.T. Act making the addition of Rs.54,47,326/- passed by the AO on account of alleged difference in the valuation of three items of stock.

8.2 We further note that in Ld. CIT(A)'s order in quantum appeal vide para 1 at page 6 Ld. CIT(A) observed that there was discrepancy quantity-wise in the inventory and the said matter had not been refuted by the Assessee either before the AO or before the Ld. CIT(A) are factually incorrect. According to AR, the Ld. CIT(A) did not dispute the stock quantity and vide para 2.8 at page 6, the Ld. CIT(A) only estimated the value of three items @Rs.33.56 per mtr. instead Rs.59.48 per mtr. as estimated by the AO.

8.3 We further note that against the Ld. CIT(A)'s order, both the Assessee and Revenue went in appeal and ITAT vide order dated 31/03/2011, upheld the order of CIT(A) by dismissing appeals of both the Assessee and the Revenue. The Revenue filed appeal before the Hon'ble Delhi High Court against ITAT order dated 31/03/2011, which was dismissed by Hon'ble High Court vide order dated 04/11/2011. The following are the observations of the Hon'ble High Court order dated 04/11/2011 :-

*"We are not inclined to entertain the present appeal under Section 260A of the Income Tax Act, 1961 as the question raised is purely factual.*

*2. The Assessing Officer noticed that the during the survey proceedings, the assessee had surrendered an amount of Rs.35.10 lacs for taxation as additional income for financial year 2006-07. There is no dispute about the same. The dispute pertains to value of zip fastener mentioned at serial No.26 and 47 and 154. The Assessing Officer had taken the value of the zip fasteners of Rs.59.48 per meter The assessee's contention was that this figure was on the higher side and not substantiated by any material or evidence. After examining the factual and aspects and evidence the CIT(A) valued the zip fasteners at Rs.37.96 per meter. The said order has been upheld by ITAT. The reasons and grounds mentioned by the two appellate authorities are not perverse. It is a reasonable view on the facts, material and evidence. The reasoning does not require interference in an appeal u/s 260A of the Income Tax Act, 1961".*

8.4 We note that the Hon'ble High Court's vide its order dated 04/11/2011 was also considered by the AO while levying penalty. In our view the addition had been made only on account of dispute pertaining to

value of zip fasteners mentioned at serial No.26 and 47 and 154 as observed by the Hon'ble High Court.

8.5 The findings of the AO for levying penalty that the Assessee failed to offer an explanation and hence, Explanation 1 to section 271(1)(c) was squarely attracted and the addition made in the assessment order in computing the income of the assessee shall be deemed to represent the income in respect of which particulars have been concealed is factually incorrect and legally untenable as explanation alongwith documentary evidence had been filed to substantiate the value of the three items because of which the AO estimated the value of three items at Rs.59.48 per mtr instead of Rs.191.57 per mtr estimated by the survey team. Thereafter, the Ld. CIT(A) estimated the value of three items at Rs.37.96 per mtr instead of Rs.59.48 per mtr estimated by the AO.

8.6 Keeping in view of the facts and circumstances of the case, we are of the view that penalty on estimation of valuation of the said items are not leviable and deserve to be cancelled.

8.7 Our aforesaid view is fortified by the judgment of the Hon'ble Allahabad High Court, Lucknow Bench in the case of Naresh Chand Agarwal vs. CIT 357 ITR 514, wherein their Lordship after referring to the Supreme Court judgment of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158, and following the judgment in the case of CIT vs. Arjun Prasad Ajit Kumar 214 CTR 355 (Allahabad H.C.) has observed that no penalty u/s 271(1)(c) can be imposed with reference to the addition made on

estimation basis. On the anvil of these judgments, the penalty of Rs.4,68,870/- in dispute is illegal and therefore deserves to be deleted.

9. In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we are of the considered view that the assessee has not furnished inaccurate particulars of income and there are no findings of the Assessing Officer and the Ld. CIT (Appeals) that the details furnished by the assessee in his return are found to be inaccurate or erroneous or false. Accordingly, we delete the penalty in dispute made u/s. 271(1)(c) of the I.T. Act and quashed the orders of the authorities below and accordingly allow the appeal filed by the assessee.

10. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 24/04/2017.

**Sd/-**

**[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER**

**SD/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 24/04/2017*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches