

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2353/Del/2014
Assessment Year : 2009-10**

**M/s CSB Solution Private
Limited,
R-40, NDSE-II,
New Delhi – 110 049.
PAN : AABCE5459P.
(Appellant)**

**Vs. Assistant Commissioner of
Income Tax,
Circle 3(1),
New Delhi.
(Respondent)**

Appellant by : Dr. Rakesh Gupta and
Shri Somil Agarwal, Advocates.
Respondent by : Shri N.K. Bansal, Senior DR.

Date of hearing : **03.08.2016**
Date of pronouncement : **05.08.2016**

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the assessee for the assessment year 2009-10 is directed against the order of learned CIT(A)-VI, New Delhi dated 19th February, 2014.

2. The only ground raised in this appeal by the assessee is against the levy of penalty of ₹4,34,230/- u/s 271(1)(c) of the Income-tax Act, 1961.

3. We have heard the arguments of both the sides and have perused the material placed before us. We find that penalty has been levied on the disallowance of commission of ₹14,05,278/-. From a perusal of the assessment order, we find that the assessee has claimed

the commission expenses amounting to ₹56,21,113/-. During assessment proceedings, the Assessing Officer, in order to verify the claim of the assessee, issued notice u/s 133(6) to ten parties, out of which, six parties sent the confirmation. However, no reply was received in respect of four parties. When these facts were brought to the assessee's representative, he agreed for the adhoc disallowance of 25% of total commission claimed by the assessee. Thus, 25% of the total commission expenses amounting to ₹14,05,278/- was disallowed. It was contended by the learned counsel for the assessee appearing before us that the assessee's authorized representative accepted the disallowance of 25% of the commission so as to buy peace and to avoid long drawn litigation. He stated that the assessee has furnished confirmation of all the parties to whom the commission was paid. TDS was duly deducted from all the persons. That summon issued u/s 133(6) was duly complied with and six persons confirmed having received the commission. Merely because four persons did not furnish reply to the Assessing Officer in response to summons, it cannot be said that the claim of the commission by the assessee was not genuine. That merely because the assessee agreed for the addition, it, in no way, saddle the assessee with the penalty u/s 271(1)(c) of the Act.

4. After considering the facts of the case and arguments of both the sides, we entirely agree with the contention of the learned counsel for the assessee. In our opinion, it is not a fit case for levy of penalty u/s 271(1)(c). While doing so, we draw support from the decision of Hon'ble Apex Court in the case of CIT Vs. Reliance Petroproducts Pvt.Ltd. – (2010) 322 ITR 158 (SC). As per Hon'ble Apex Court, merely because the assessee's claim for any deduction is not accepted by the Revenue, penalty u/s 271(1)(c) of the Act is not attracted. On the facts

of the case, the above decision of Hon'ble Apex Court would be squarely applicable. Respectfully following the same, we cancel the penalty levied u/s 271(1)(c) of the Act.

5. In the result, the appeal of the assessee is allowed.
Decision pronounced in the open Court on 05.08.2016.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **M/s CSB Solution Private Limited,
R-40, NDSE-II, New Delhi – 110 049.**
2. Respondent : **Assistant Commissioner of Income Tax,
Circle 3(1), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar