

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

**Before Sh. N. K. Saini, AM And Sh. Vijay Pal Rao, JM**

**ITA No. 5292/Del/2013 : Asstt. Year : 2007-08**

ACIT, Circle-7(1), New Delhi	Vs	M/s Samtel Display Systems Ltd. 6 <sup>th</sup> Floor, TDI Centre, Distt. Centre, Jasola, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACS0390N</b>		

**Assessee by : Sh. D. C. Garg, CA  
Revenue by : Smt. Anima Barnwal, Sr. DR**

<b>Date of Hearing : 22.12.2015</b>	<b>Date of Pronouncement : 22.12.2015</b>
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**ORDER**

**PER N. K. Saini, AM:**

This is an appeal by the department against the order dated 25.07.2013 of Id. CIT(A)-X, New Delhi.

2. The only grievance of the department in this appeal relates to the deletion of penalty of Rs.67,26,720/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the AO made an addition of Rs.2,00,20,000/- on account of expenses on share warrant forfeiture, in the assessment order u/s 143(3) of the Act. The AO observed that the assessee

had invested in fully transferable warrants of its associate company M/s Samtel Colors Ltd. and had not invested in any other scripts warrants or equities of any other company during the period. He further observed that the claim of expenditure as being wholly and exclusively for the business of the assessee company could not be accepted since it was stand alone investment and could only be allowed under the head of capital gains. The AO also came to the conclusion that there were inaccurate particulars filed by the assessee and since the addition had been confirmed by the Id. CIT(A), it was a fit case for levying the penalty u/s 271(1)(c) of the Act. Accordingly, the AO levied the penalty of Rs.67,26,720/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the quantum addition has been deleted by the ITAT in ITA No. 4133/Del/2010 vide order dated 28.06.2012 and it was held that the loss suffered by the assessee was not a business loss but a loss under the head capital gains. Therefore, there was no case for imposing the penalty u/s 271(1)(c) of the Act. The reliance was placed on the following case laws:

- *CIT Vs Vamchamrigons & Agro Proudce (2006) 200 CTR 259 (Del)*
- *CIT Vs Krishna Maruti Ltd. (2011) 330 ITR 547 (Del)*
- *CIT Vs Reliance Petroproducts P. Ltd. 322 ITR 158 (SC)*

5. The Id. CIT(A) after considering the submissions of the assessee observed that the claim of Rs.2,00,20,000/- was allowed by the then Id.

CIT(A) to be considered as a capital loss and the said view was upheld by the ITAT, therefore, there was no furnishing of inaccurate particulars. The Id. CIT(A) accordingly deleted the penalty levied by the AO.

6. Now the department is in appeal. The Id. DR supported the order of the AO but could not controvert this vital fact that the addition on the basis of which penalty u/s 271(1)(c) of the Act was levied by the AO has been deleted by the ITAT.

7. In his rival submissions the Id. Counsel for the assessee reiterated the submission made before the authorities below and strongly supported the impugned order passed by the Id. CIT(A).

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the loss of Rs.2,00,20,000/- was claimed by the assessee as business loss but the AO treated the same as a loss to be adjusted against the capital gains. When the assessee preferred an appeal to the Id. CIT(A) the claim of the assessee was allowed by reversing the view taken by the AO in Appeal No. 68/2009-10 order dated 02.06.2010. Against the said order of the Id. CIT(A) the department preferred an appeal to the ITAT in ITA No. 4133/Del/2010 for the assessment year 2007-08 wherein vide order dated 28.06.2012, the order of the Id. CIT(A) was upheld by following the judgment of the Honøble Delhi High Court in the case of CIT Vs Chand Ratan Bagri wherein it was held that forfeiture of convertible warrants results in extinguishment of right of the assessee to obtain a share

in the company and results in loss under head capital gains. Therefore, in the present case, from the above narrated facts, it is clear that very basis for levying the penalty u/s 271(1)(c) of the Act, is not in existence. On a similar issue the Honorable Supreme Court in the case of CIT Vs K.C Builders 265 ITR 562 held as under:

*“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled.”*

9. In the present case also since the addition on the basis of which the penalty was levied is no more in existence, therefore, the penalty levied by the AO u/s 271(1)(c) of the Act was rightly deleted by the Id. CIT(A). In that view of the matter, we do not see any merit in this appeal of the department.

10. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 22/12/2015)

**Sd/-**  
**(Vijay Pal Rao)**  
**JUDICIAL MEMBER**

**Dated: 22/12/2015**

\*Subodh\*

Copy forwarded to:

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

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**