

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

ITA No. 2411/Del/2006
Assessment Year: 2000-01

ACIT, Circle-16(1),
New Delhi

Vs.

M/s T.D.T. Copper Ltd,
7-Jagruti Enclave, Vikas Marg,
Delhi
(PAN:AAACT1028N)
(Respondent)

(Appellant)

Appellant by : Sh. K.K. Jaiswal, DR
Respondent by : S/sh. R.S. Singhvi, CA & Satyajit, CA

Date of hearing: 09.09.2015
Date of pronouncement: 23.09.2015

ORDER

PER INTURI RAMA RAO, A.M.:

This appeal arise out of the order of Honøble High Court of Delhi in ITA No. 1242 of 2008, dated 14th December, 2009 whereby the earlier order of this Tribunal dated 17th January, 2008 was set aside. The Revenue filed the present appeal against the order of CIT(A)-XIX, New Delhi, dated 21st April, 2006 for the assessment year 2000-01.

2. The brief facts of the case are that the assessee company filed the return of income for the assessment year 2000-01 on 29.11.2000, disclosing a loss of Rs. 11,97,57,110/-. Subsequently, the return of income was selected for scrutiny assessment and the assessment came to be completed under Section 143(3) vide

order dated 24th February, 2003 at a loss of Rs. 10,35,22,302/- , after making the following additions:

With these remarks the total income is computed as under:

Total loss as per return		Rs. 11,97,50,110/-
Add		
1. Notional foreign exchange fluctuation (as discussed in Para 3)	Rs. 1,32,27,809/-	
2. Filing fees (as discussed in para 4)	Rs. 13,50,000/-	
3. Repair and Maintenance expenses (as discussed in para 5)	Rs. 13,95,000/-	
4. Prior period expenses (as discussed in para 6)	Rs. 1,54,999/-	
5. Total	Rs. 1,62,27,808/-	<u>Rs. 1,62,27,808/-</u>
6. Total Loss of the assessee		<u>Rs.10,35,22,302/-</u>

Assessed at a Total Loss of Rs. 10,35,22,302/-. Issue necessary forms. Penalty proceedings u/s 271(1)(c) are initiated.

Being aggrieved from the above addition, the assessee preferred an appeal before the CIT(A) who confirmed the additions. While the matter stood thus, the Assessing Officer initiated the penalty proceedings under Section 271(1)(c) of the Act and imposed the penalty of Rs. 62,09,206/- vide order dated 30th March, 2005. On appeal before the CIT(A), the CIT(A) deleted the penalty on the reasoning that mere disallowance of claim cannot lead to the concealment of income. On further appeal before this Tribunal by the Revenue, the Tribunal vide its orders dated 17th January, 2008 placing reliance on the decision of Honøble Supreme Court in the case of Virtual Soft Systems Ltd. Vs. CIT, 289 ITR 83(SC) confirmed the order of the CIT(A). On appeal before the Honøble High Court, the High Court held that since the decision of Tribunal was based on the judgment of the Honøble Supreme Court in the case of Virtual Soft Systems Ltd. (supra), which had been overruled by the Honøble Supreme Court

itself in the case of CIT Vs. Gold Coin Health Food Pvt. Ltd, 304 ITR 308, remitted the matter back to this Tribunal. Thus, the present matter is before us.

3. Learned Sr. DR relied on the order of the Assessing Officer imposing penalty.

4. The learned counsel for the respondent assessee company submitted that the penalty was imposed on mere disallowance of claim and therefore, the ratio laid down in the case of Reliance Petroproducts Pvt. Ltd., 322 ITR 156, is squarely applicable.

5. We heard the rival submission and perused the material on record. On perusal of the order of penalty under Section 27(1)(c) of the Act, it is clear that the penalty was imposed for mere disallowance of claim. From the nature of addition made, it is clear that the additions have been made on the issue involving debate whether it is capital expenditure or revenue expenditure. There are plethora of decisions in support of the propositions that a mere making a claim not sustainable in law by itself will not amount to furnish inaccurate particulars of income and the decision of the Honøble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd, 322 ITR 158 also support this proposition. Further, we find that the Assessing Officer had not given any finding in the penalty order as to how and in what manner the assessee company had furnished inaccurate particulars of income leading to the addition. In the absence of such finding, the penalty order cannot be sustained in the eyes of law as held in the following decisions:

- (a) *CIT v. Balbir Singh* [\[2008\] 304 ITR 125/\[2007\] 164 Taxman 65 \(Punj. & Har.\)](#)
- (b) *National Textiles v. CIT* [\[2001\] 249 ITR 125/114 Taxman 203 \(Guj\)](#)
- (c) *Nainu Mal Het Chand v. CIT* [\[2007\] 294 ITR 185/160 Tamxan 49 \(All\)](#)
- (d) *CIT v. Super Metal Re-rollers (P.) Ltd.* [\[2004\] 265 ITR 82/135 Taxman 407 \(Delhi\)](#)
- (e) *Diwan Enterprises v. CIT* [\[2000\] 246 ITR 571 \(Delhi\)](#)
- (f) *CIT v. Shivnarayan Jamnalal & Co.* [\[1998\] 232 ITR 311/\[1996\] 89 Taxman 420 \(MP\)](#)
- (g) *CIT v. T. Abdul Majeed* [\[1998\] 232 ITR 50/\[1997\] 93 Taxman 491 \(Ker\)](#)

6. In the light of the above legal proposition, we do not find any legal infirmity in the order of CIT(A) and thus sustain the same. Hence, the appeal filed by the Revenue is dismissed, as such.

7. In the result, the appeal is dismissed.

The decision is pronounced in the open court on 23rd September, 2015.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 23rd September, 2015.

RK/-

Copy forwarded to:

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi