

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

**BEFORE SH. G.D. AGARWAL, VICE PRESIDENT
AND
SH. I.C. SUDHIR, JUDICIAL MEMBER**

ITA No. 1650/Del/2014
Assessment Year: 2006-07

M/s. Trak Services Pvt. Ltd., B-19, Defence Colony, New Delhi	Vs.	ACIT, Circle-16(1), New Delhi
PAN : AA ACT0911A		
(Appellant)		(Respondent)

Appellant by	Sh. G.N. Gupta, Adv.
Respondent by	Sh. Atiq Ahmad, Sr.DR

Date of hearing	21.06.2016
Date of pronouncement	31.08.2016

ORDER

PER I.C. SUDHIR, J.M.:

The present appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeal), dated 06.02.2014, on the following grounds of appeal:

- i. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-XIX, New Delhi (hereinafter called CIT(A) for the same of brevity) erred in confirming the action of the Asstt. Commissioner of Income Tax, Circle - 16(1), New Delhi (hereinafter called AO for short) in holding the penalty of Rs.6,16,598/- imposed by the AO.*

- ii. That on the facts and in the circumstances of the case, Commissioner of Income Tax(A) erred in not deleting the entire penalty of Rs. 6,16,598/- imposed by the Assessing Officer.*
- iii. That the appellant craves leave to add, alter, amend or vary any of the aforesaid grounds of appeal.*

2. Heard and considered the arguments advanced by the parties in view of the orders of the authorities below, material on record and the decisions relied upon.

3. The facts in brief are that during the course of assessment proceedings, the Assessing Officer noted that the assessee shown advance of Rs.18,59,218/- which as per the Assessing Officer should have been included by the assessee in its income but was shown as advance in its books of account. The Assessing Officer noted that the sum has been shown in the balance sheet as a liability without routing them through the profit and loss account. The Assessing Officer accordingly added this amount in the income of the assessee. The assessee went in first appeal but could not succeed. The Assessing Officer has levied penalty under Section 271(1)(c) of Act on this addition.

4. In support of the ground, the learned Authorized Representative submitted that during the year, the assessee had advanced aggregating to Rs.23,65,672/- from its franchisees with whom franchise agreements were signed by 31.03.2006. Out of these advances, Rs.5,05,855/- were refunded as the prospective franchisees decided not to open the franchisees restaurants and, therefore, wanted refunds of

their money. The Assessing Officer, therefore, held that advances aggregating to Rs.18,59,218/- as income of the assessee. He submitted that in accordance with the Accounting Standards on Revenue Recognition issued by the Institute of Chartered Accountants of India, the assessee considered the advance as such and not as income. Thus, the accounting policies were clearly disclosed in Schedule –XIV and accounting policy and notice to their accounts are attached with the annual accounts and return of income. The assessee, therefore, had truly disclosed all the facts relating to advances in its return of income and its accompanying documents which had to be statutorily filed by the assessee.

5. Learned Authorized Representative further submitted that the details of Rs.18,59,218/- were furnished showing that the assessee had written back these advances and had shown them as its income in the assessment years 2009-10 and 2007-08. Thus, the assessee had thoroughly acted in a bonafide manner and cannot be said to be guilty of either suppressing of facts or furnishing wrong particulars of income. He placed reliance on the following decisions:

- i. Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC);
- ii. Commissioner of Income Tax Vs. Smt. Neenu Dutta, 357 ITR 525 (Del.)

6. Learned Sr. Departmental Representative, on the other hand, tried to justify the orders of the authorities below. He

also placed reliance on the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Zoom Communications Pvt. Ltd., 327 ITR 510 (Del.)

7. Considering the above submissions, it is an admitted fact that the addition of Rs.8,59,218/- was made by the Assessing Officer only on the basis of information disclosed by the assessee, who was nurturing a bonafide belief that the amount received on account of franchisees in absence of execution of franchise agreements were advances and are not the income of the assessee in view of some Accounting Standards issued by the Institute of Chartered Accountants of India. Thus, it cannot be a case of concealment of any particulars of income or furnishing of inaccurate particulars of income thereof on the part of the assessee to invoke provisions of Section 271(1)(c) of the Act. It is an established proposition of law that being penal in nature provisions under Section 271(1)(c) of the Act can be invoked only where there is a positive evidence beyond doubt that there was concealment of particulars of income or furnishing inaccurate particulars of income thereof on the part of the assessee towards the addition that is the subject matter of the penalty. The authorities below were thus not justified in imposing penalty and sustaining the same in absence of fulfillment of the above two required ingredients. We thus while setting aside the orders of the authorities below direct the Assessing Officer to delete the penalty in question levied at Rs.6,16,598/- under Section 271(1)(c) of the Act. The grounds involving the issue are thus allowed.

8. In the result, the appeal of the assessee is allowed.
The decision is pronounced in the open court on 31st August, 2016.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT
Dated: 31st August, 2016.

Rk/-

Copy forwarded to:

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

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Asst. Registrar, ITAT, New Delhi