

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

Before Sh. N. K. Saini, AM and Sh. H. S. Sidhu, JM

ITA No. 776/Del/2014 : Asstt. Year : 1997-98

Varsha Spinning Mills Ltd., C/o M/s S. Chaturvedi & Associates, 305, Deep Shikha, 8, Rajendra Place, New Delhi-110008	Vs	JCIT, Spl. Range-20, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACV2835K		

**Assessee by : Sh. S. K. Chaturvedi, CA
Revenue by : Sh. Shravan Gotru, Sr. DR**

Date of Hearing : 04.07.2017	Date of Pronouncement : 04.07.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 21.10.2013 of Id. CIT(A)-XIX, New Delhi.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the quantum addition on the basis of which the impugned penalty was levied by the AO and sustained by the Id. CIT(A) was set aside by the ITAT in ITA No.6676/Del/2013 vide order dated

27.07.2016 in assessee's own case. Therefore, the penalty u/s 271(1)(c) of the Act is not leviable, since the addition on the basis of which this penalty was levied has been set aside.

4. In his rival submissions the Id. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the addition on the basis of which the impugned penalty was levied by the AO u/s 271(1)(c) of the Act was a subject matter of the assessee's appeal in ITA No. 6676/Del/2013 wherein vide order dated 27.07.2016, the issue has been set aside to the file of the AO and the relevant findings have been given in para 4 of the said order which read as under:

“4. In view of the above submissions of the parties we are of the considered opinion that due to one reason or other, the assessee could not get opportunity to place his case properly before the AO and CIT(A) and thus to meet ends of justice and to prevent injury caused to it due to violation of principles of natural justice, we find it appropriate to restore the case to the file of the AO for afresh and de novo framing of assessment order after affording due opportunity of hearing to the assessee. We order accordingly.”

6. In the present case, now, it is clear that the addition on the basis of which the impugned penalty was levied, has been set aside to the file of the AO. Therefore, the issue relating to levy of penalty u/s 271(1)(c) of the Act being consequential is also set aside to the file of the AO.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 04/07/2017)

Sd/-
(H. S. Sidhu)
JUDICIAL MEMBER

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

Dated: 04/07/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR