

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. Nos. 3504 & 3464/DEL/2013

A.Yrs. 2005-06 & 2006-07

DCIT, CIRCLE-9(1),  
ROOM NO. 163,  
C.R. BUILDING,  
NEW DELHI

**(APPELLANT)**

VS. M/S SONY INDIA PVT. LTD.  
A-31, MOHAN COOPERATIVE  
INDUSTRIAL ESTATE, MAIN MATHURA  
ROAD, NEW DELHI  
(PAN: AABCS1571Q)

**(RESPONDENT)**

Department by : Sh. Kaushlendra Tiwari, Sr. DR.

Assessee by : Sh. Nageshwar Rao, Adv. & Sh. Purushottam  
Anand, Adv.

**ORDER**

**PER H.S. SIDHU, JM :**

These appeals by the Revenue are directed against the Orders of the Ld. Commissioner of Income Tax (Appeals)-XII, New Delhi dated 11.02.2013 & 26.2.2013 pertaining to Assessment Years 2005-06 & 2006-07 respective. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with assessment year 2005-06.

2. First we deal with ITA No. 3504/Del/2013 for AY 2005-06 wherein the following grounds have been raised.

- i) The CIT(A) has erred in deleting the penalty of Rs. 2,07,46,650/- u/s. 271(1)(c) of the Income Tax Act, 1961.
- ii) The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.

2.1 In other Appeal, identical issues are involved and similar grounds have been raised, the only difference is in the figures involved.

3. The brief facts of the case are that return in this case was filed at an income of Rs. 36,16,57,100/- on 31.10.2005. The assessment in this case was completed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act) on 29.12.2008 at an income of Rs. 1,00,81,35,500/- and minimum penalty u/s. 27(1)© of the Act amounting to Rs. 2,07,46,650/- was levied in connection with the following disallowances, vide order dated 28.12.2011.

- Depreciation amounting to Rs. 4,42,22,475/- on the assets of Daruhera unit closed during the year;
- Deferred allowance of 4/5<sup>th</sup> of legal and other expenses on restructuring of business amounting to Rs. 1,37,65,600/- (to be allowed in equal instalments in four subsequent assessment years); and

- Exclusion of miscellaneous income from the claim of tax deduction under section 10A and 10B amounting to Rs. 2,59,765/-.

3.1 Against the aforesaid penalty order, the assessee filed the appeal before the Ld. CIT(A), who vide her impugned order dated 11.2.2013 has deleted the minimum penalty of Rs. 2,07,46,650/- imposed by the AO and partly allowed the appeal of the assessee.

4. Aggrieved with the impugned order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

6. On the other hand, Ld. A.R. of the assessee relied upon the order of the Ld. CIT(A) and stated that she has passed a well reasoned order which does not need any interference on our part. However, he further stated that assessee made adequate and all mandatory disclosures in financial statements and tax returns and allegations of concealments or filing of inaccurate particulars of income is completely contradictory to the facts of the case and settled principles of law. He further stated that the issue no. 1 relating to depreciation in respect of Daruhera Unit is concerned. In this case the Hon'ble High Court has ruled that this issue is in favour of the assessee vide order dated 24.1.2017 passed in ITA No. 14/2012 and attached the copy thereof with the Synopsis; as regards issue no. 2 relating to excess depreciation on license fee paid for

computer service is concerned, by attaching the copy of the AO dated 6.9.2016, it was stated that the order of the AO dated 6.9.2016 giving effect to Tribunal's order allows the issue in favour of assessee; and with regard to issue no. 3 relating to exclusion of misc. income from deduction u/s. 10A & 10B is concerned, it was stated that Ld. CIT(A) has rightly considered that the assessee obtained certificates from Chartered Accountant and thus acted on the basis of expert advice/ opinion for claiming such 10A/10B. Hence, he submitted that it cannot be said to have concealed any income or provided any wrong particulars of income. It was further stated that disclosures as required as per law were made and there is no question of levying any penalty under Section 271(1)(c) of the Act and placed reliance on the decision of the Hon'ble Supreme Court of India in the case of CIT vs. Reliance Petroproducts P Ltd. (2010) 322 ITR 158.

7. We have heard both the parties and perused the records. With regard to ground no. 1 relating to Depreciation amounting to Rs. 4,42,22,475/- on the assets of Daruhara unit closed during the year is concerned, we find that the assessee had made adequate disclosure in the audited financial statements, tax audit report filed along with the return of income. During the course of assessment proceedings, the assessee had provided the necessary explanations and made due submissions, which were supported by sufficient documentation and guided by judicial decisions. Hence no case of concealment or filing of inaccurate particulars of income. In this regard, it was stated that mere

non-acceptance of the grounds of the assessee during the assessment or the assessee proceedings should not attract penalty under section 271(I)(c) of the Act. We note that section has been inserted to prevent assessee's from evading taxes by means of false and bogus claims. The under mentioned cases elucidate the principle that a mere non acceptance of a claim and addition on that account do not entitle the revenue to impose penalty under section 271 of the Act. Further, the Assessing Officer had not questioned the genuineness of the expenditure and therefore mere disallowance in the assessment order cannot per-se become a basis for levy of penalty as levied in this case. Reliance in this regard is placed on the following:

- Reliance Petroproducts Private Limited (322 ITR 158) (SC),
- Delhi Cloth & General Mills Co. Ltd. vs. CIT 1986 (157 ITR 822) (Delhi HC)
- DC IT vs. Indiahit Com (P) Ltd (2006) 105 TTJ 501 (Del ITAT)
- Commissioner of Income-tax vs. Ajaib Singh and Co [2002] 253 ITR 0630-[Punjab and Haryana High Court]
- CIT vs. Shree Bala Finvest Pvt Ltd [2009] 2009-T10L-705-HC-AHMJT.

That there is no closure of business of the assessee as affirmed by the Hon'ble Delhi High Court and consequently the block of the assets continue to exist, there is absolutely no infirmity in assessee's treatment

of reducing the sales consideration in relation to assets of the Daruhera's unit from the respective block of assets and claiming depreciation on the adjusted block of assets. Keeping in view of the above stated facts and various pronouncements quoted above, we are of the view this is not a case where there is no closure of business of the assessee same has been affirmed by the Hon'ble Delhi High Court and consequently the block of the assets continue to exist, there is absolutely no infirmity in assessee's treatment of reducing the sales consideration in relation to assets of the Daruhera's unit from the respective block of assets and claiming depreciation on the adjusted block of assets. Hence, there is no case of penalty, therefore, Ld. CIT(A) has rightly deleted the same, which does not need any interference on our part, hence, we uphold the same and reject the ground no. 1 raised by the Revenue.

7.1 With regard to ground no. 2 relating to Deferred allowance of 4/5<sup>th</sup> of legal and other expenses on restructuring of business amounting to Rs. 1,37,65,600/- (to be allowed in equal instalments in four subsequent assessment years) is concerned, we find that the question of law has been admitted by the Hon'ble Delhi High Court which demonstrate clearly that the Court is satisfied that the issue involved is a substantial question of law and a legal scrutiny of the issue is essential. Admission of substantial question of law by High Court shows that the claim of the assessee was debatable and also lends credence to the bonafide of the claim. We are of the considered view that it is settled law that no penalty is leviable in cases where a question of law is admitted in the

Hon'ble High Court. Admission of question of law by the Hon'ble High Court on this issue itself shows that the claim of the assessee was legitimate and debatable. Hence, no penalty under section 271(1)(C) is leviable where the issue is debatable and a question of law is admitted by the High Court, hence, we are of the view that Ld. CIT(A) has rightly deleted the penalty on this issue, which does not need any interference on our part, hence, we uphold the same and reject the ground no. 2. Aforesaid Our view is fortified by the decision of the Hon'ble Delhi High Court in case of CIT II vs Liquid Investments and Trading Ltd (ITA 240/2009).

7.2 With regard to ground no. 3 relating to exclusion of miscellaneous income from the claim of tax deduction under section 10A and 10B amounting to Rs. 2,59,765/- is concerned, we find the Assessing Officer while excluding the miscellaneous income from the profit of 10A and 10B units had considered the miscellaneous income of the assessee as a whole instead of the miscellaneous income of the 10A and 10B unit and examining the nature thereof, therefore resulting in an ad-hoc disallowance which cannot be a basis for levy of penalty. The assessee had obtained certificates from a Chartered Accountant in Forms 56F and 56G and had thus acted on the basis of an expert advice/opinion for claiming 10A/10B deductions. That the assessee had made adequate disclosure in the audited financial statements, the notes to the computation of income filed along with the return of income. During the course of assessment proceedings, the assessee had provided the necessary explanations and made due submissions dated 05 December 2008, which were supported by sufficient documentation and guided by judicial decisions. Keeping in view of the detail discussion as above, we are of the view that there is no case of penalty. Hence the minimum

penalty imposed by the Assessing Officer was rightly cancelled, which does not need any interference on our part, hence, we uphold the same and reject the ground no. 3.

8. Keeping in view of the facts and circumstances and the precedent relied upon, we are of the considered view that the minimum penalty of Rs. 2,07,46,650/- was rightly deleted, which does not need any interference on our part, hence, we uphold the same and reject all the grounds raised by the Revenue.

9. In the result, both the Appeals filed by the Revenue stand dismissed.

Order pronounced on 28/09/2017.

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Date: 28/09/2017

"SRBHATNAGAR"

**Copy forwarded to: -**

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

TRUE COPY  
By Order,

Assistant Registrar,  
ITAT, Delhi Benches