

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A. No. 5134/DEL/2015	
	A.Y. : 2009-10	
ACIT, CIRCLE 1(1), GURGAON	VS.	M/S DLF INFO CITY DEVELOPERS (CHENNAI) LTD., 3 RD FLOOR, SHOPPING MALL COMPLEX, ARJUN MARG, DLF CITY, PHASE-IV, GURGAON (PAN:AACCD1488Q)
(APPELLANT)		(RESPONDENT)

Department by : Sh. Naveen Chandra, CIT(DR)
Assessee by : Sh. R.S. Singhvi, & Satyaj
Goel, CAs'

ORDER

PER H.S. SIDHU, JM

Revenue has filed the appeal against the Order dated 11.6.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-1, New Delhi pertaining to assessment year 2009-10 on the following grounds:-

- 1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in fact and law in cancelling the penalty of Rs. 12,85,50,180/- imposed u/s. 271(1)(c) of the I.T. Act.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in fact and in law in cancelling the penalty u/s. 271(1)(c) on account of excess deduction claimed in terms of provision of section u/s. 80IAB(10) read with section 80IAB(3) of the Act to the tune of Rs. 37.82 crore for making exaggerated and unreasonable claim of benefit under the Act.*
3. *That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.*

2. The facts in brief are that returned income of Rs. 43,68,57,674/- was assessed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act), vide order dated 30.12.2011 at a total income of Rs. 1025,32,87,330/-. Penalty proceedings u/s. 271(1)(c) of the Act were also initiated during the course of assessment proceedings by the AO. The assessee preferred an appeal before the Ld. CIT(A) against the order u/s. 143(3) of the Act, who vide his order dated 27.12.2012 has allowed part relief. During the course of penalty proceedings, the AO after considering the assessee's reply, held that it had furnished inaccurate particulars of its income to the tune of Rs. 37,82,00,95/- and accordingly, imposed a penalty of Rs. 12,85,50,180/- u/s. 271(1)(c) of the Act. Aggrieved with the penalty order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 11.6.2015 has directed the

AO to cancel the penalty in dispute and allowed the appeal of the assessee. Against the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

3. Ld. DR relied upon the orders of the AO and reiterated the contentions raised in the grounds of appeal.

4. At the time of hearing, Ld. AR of the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has deleted the penalty of Rs. 12,85,50,180/- in dispute by observing that since the very basis of penalty stands quashed by the ITAT for the AY 2009-10, vide consolidated order dated 13.11.2014 & in ITA Nos. 1315 & 1316 and ITA No. 1475 & 1467 in assessee and group associate namely, DLF CyberCity Developers Ltd. and dismissed the appeal of the Revenue's Appeal by respectfully following the aforesaid order of the ITAT. In this behalf he filed the copy of the Tribunal's Order dated 13.11.2014 & its Corrigendum dated 19.11.2014 in assessee's own case and he requested that penalty in dispute may be deleted.

5. We have carefully considered the rival submissions and perused the records. We find that Penalty proceedings u/s. 271(1)(c) of the Act were initiated during the course of assessment proceedings by the AO. The assessee preferred an appeal before the Ld. CIT(A) against the order u/s. 143(3) of the Act, who vide his order dated 27.12.2012 has allowed part relief. During the course of penalty proceedings, the AO after considering the assessee's reply, held that it had furnished inaccurate particulars of

its income to the tune of Rs. 37,82,00,95/- and accordingly, imposed a penalty of Rs. 12,85,50,180/- u/s. 271(1)(c) of the Act. We note that it is not in dispute that the very basis of penalty stands quashed by the Tribunal for the AY 2009-10, which, vide its Consolidated Order dated 13.11.2014 (in ITA Nos. 1315 & 1316 and ITA Nos. 1475 & 1467 in the assessee's case and group associate namely, DLF CyberCity Developers Ltd. & corrigendum dated 19.11.2014), allowed assessee's appeal in full against the Order of the Ld. CIT(A), and dismissed Department's appeal. Therefore, following the order 13.11.2014 of ITAT, Delhi, as aforesaid, the Ld. CIT(A) has rightly cancelled the penalty order and allowed the appeal of the Assessee.

5.1 Furthermore, on the merits of the case, it is revealed that on identical facts wherein the Order of the ITAT for the A.Y. 2008-09 deleting the entire addition, was available with the Assessing Officer, penalty u/s 271(1)(c) of the Act had not been imposed. The Assessing Officer, considering the facts of the case ought to have exercised her jurisdiction u/s 275(1)(a) of the Act, and instead of levying the penalty and creating a huge demand, should have kept the penalty proceedings in abeyance, as she herself had not imposed the penalty on identical facts in the A. Y. 2008-09. This view draws support from the decisions of the Hon'ble Delhi High Court, in the case of CIT Vs. Mohair Investment and Trading Co. P. Ltd. dated 30.09.2011 in ITA No.511/2011 reported as (2012) 345 ITR 51, wherein the issue of limitation as enshrined U/s 275(1)(a) of the

Income Tax Act, 1961 was considered. The Hon'ble High Court of Delhi held as under:

"11. Thus we are of the view that the proviso to Section 275 (1) (a) of the Act does not nullify the availability to the Assessing Officer of the period of limitation of six months from the end of the month when the order of the ITAT is received by the Assessing Officer."

5.2 In addition, another significant fact is that the Ld. CIT(Appeals) has allowed full relief to the assessee on identical facts for the Assessment Years 2010-11 and 2011-12. Thus, not only in the current year but in preceding and succeeding years as well, no addition has been made/sustained on the issue which has been the subject matter of penalty u/s 271(1) (c) of the IT Act.

6. Hence, after a careful consideration of the facts of the case, particularly the order of ITAT, Delhi, as aforesaid, in assessee's own case deleting the entire addition and subsequent year's orders of the Ld. CIT(A) allowing full relief to the assessee, we are of the considered view that the penalty of Rs. 12,85,50,180/- imposed u/s 271(1)(c) of the Act was rightly directed to be cancelled, which does not need any interference

on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the Appeal of the Revenue.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 04/10/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 04/10/2017

"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