

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6045/Del/2015  
(Assessment Year: 2004-05)**

Jackson Engineers Ltd. 626, 6 <sup>th</sup> Floor, DLF Tower-A, Jasola, New Delhi. AAACJ1625K	vs	ACIT Central Circle 4 New Delhi.
<b>Assessee by</b>		<b>Sh. Ashish Chadha, CA</b>
<b>Revenue by</b>		<b>Sh. Arun Kumar Yadav, Sr. DR</b>

<b>Date of Hearing</b>	<b>18.09.2017</b>
<b>Date of Pronouncement</b>	<b>13.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

Assessee filed this appeal challenging the order dated 07.10.2015 in appeal no. 46/14-15 passed by the Ld. Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter for short called as the "Ld. CIT (A)") on the following grounds:

1. *"On the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] confirming penalty u/s 271(1)(c) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in confirming the penalty of Rs. 6,50,430/-*

*u/s 271(1)(c) of the Income Tax Act, 19671 (Act) on account of disallowance of Rs. 18,88,042/- holding revenue expenditure as capital expenditure.*

3. *On the facts and circumstances of the case, the Ld.CIT (A) has erred both on facts and in law in rejecting the contention of the assessee that there is neither concealment nor furnishing of inaccurate particulars of income which are the two main postulates for the applicability of the provision of Section 271(1)(c) of the Income Tax Act.*
4. *On the facts and circumstances of the case, the Ld. CIT (A) has erred in rejecting the contention of the appellant that penalty proceedings are independent proceedings and as such merely on the basis of disallowances and additions, penalty cannot be levied.*
5. *On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in holding that assessee has failed to furnish accurate particulars of income despite of the fact that all the material facts were duly disclosed by the assessee at the time of filing of return of income and during the course of assessment proceedings before the Ld. AO.*
6. *On the facts and circumstances of the case, the ld. CIT (A) has erred both on facts and in law in confirming the penalty by ignoring the contention of the assessee that the addition has been made on account of difference of opinion of Ld. AO and assessee and, therefore, no penalty u/s 271(1)(c) of the Act is leviable in case of such a debatable claim in view of various judicial precedents.*
7. *On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in ignoring the fact that the assessee having relied upon the report of auditor as appointed under section 44AB of the Act regarding such expenditure being revenue in nature, no penalty can be imposed if such expenditure is assessed as capital expenditure.*
8. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Briefly stated facts relevant for the disposal of this matter are that the assessee is a public company incorporated under the provisions of Companies Act, 1956 and a search was conducted in the premises of the assessee on 10.02.2010 pursuant to which notice u/s 153A of the Act was served on the assessee. Assessee

filed return of income on 28.03.2011 declaring a total income of Rs. 1,82,63,915/-. It was found that the assessee incurred expenses of Rs. 25,90,060/- in respect of up-gradation and maintenance of software and claimed deduction treating it as Revenue expense. However, Assessing Officer disallowed the said expense of Section 37 of the Act, added the same to the cost of the computers and allowed depreciation at 60% u/s 32 of the Act. In that process, AO disallowed a sum of Rs. 18,13,032/- and passed order dated 26.12.2011 u/s 143(3) and 153A of the Act and at the same time initiated penalty proceedings u/s 271(1)(c) of the Act. Penalty proceedings were concluded by order dated 14.03.2014 levying the penalty of Rs. 6,50,430/- on account of the disallowance of claim u/s 37 of the Act in respect of the so called capital expenditure.

3. Appeal preferred by the assessee was dismissed by the Ld. CIT (A) by way of impugned order. Hence, this appeal by the assessee.

4. It is the argument of the Ld. AR that on account of disallowance of Rs. 18,88,042/- claimed by the assessee as

Revenue expenditure but treated by the AO as capital expenditure cannot be a basis for levying the penalty and as a matter of fact there is neither concealment of income nor furnishing inaccurate particulars thereof, as such, provisions u/s 271(1)(c) of the Act have no application. Per contra, it is the argument of the Ld. DR that a false claim u/s 37 of the Act amounts to furnishing of inaccurate particulars, as such, the authorities below are right in their approach and in levying the penalty.

5. So far as the facts are concerned, there is no dispute. In respect of the expense incurred by the assessee for up-gradation and maintenance of software to the tune of Rs. 25,90,060/- the assessee treated it as Revenue expenditure, whereas AO treated it as capital expenditure and by denying the deduction u/s 37 of the Act, AO allowed the depreciation at 60% u/s 32 of the Act. Here the entire question revolves around the treatment of the expense relating to the up-gradation and maintenance of the software. AO differed with the view taken by the assessee but that does not per se amount to either concealment of income or furnishing all inaccurate particulars in as much as all these details are available

before the AO. It is not a matter of concealment of income or furnishing of wrong particulars but only a debatable question as to the treatment of this particular expenditure. In these circumstances, while following the decision of the Hon'ble Apex Court in CIT Vs. Reliance Petro Products Pvt. Ltd., (2010) 322 ITR 158 (SC) we find it difficult to hold that any of the ingredients required to invoke the proceedings u/s 271(1)(c) of the Act are existing in this matter. We, therefore, quash the penalty proceedings. Ground are allowed accordingly.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Dated: 13.10.2017

\*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

