

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

**BEFORE SH.R.K.PANDA, ACCOUNTANT MEMBER
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 4255/Del/2014
(ASSESSMENT YEAR: 2006-07)**

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| DCIT, Central Circle- 2, New Delhi. | vs | Vipin Kumar Agarwal, 240, Okhla Industrial Estate, Phase-III, New Delhi-110020. PAN-AAEPA5202G |
| (Appellant) | | (Respondent) |

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|------------------------------|----------------------|
| Appellant by | None |
| Respondent by | Sh. Amit Jain, Sr.DR |
| Date of Hearing | 16.10.2017 |
| Date of Pronouncement | 17.10.2017 |

ORDER

PER K.N.CHARY, JUDICIAL MEMBER

This appeal of the Revenue, being aggrieved by the order dated 23.05.2014 in appeal No.137/2013-14 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-III, New Delhi for Assessment Year 2006-07, is on the following grounds:-

1. *"On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the penalty of Rs.4,68,190/- imposed by the AO u/s 271(1)(c) of the Income Tax Act, 1961.*
 2. *"On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in relying upon the judgement in the case of Commissioner of Income Tax vs Reliance Petroproducts Pvt. Ltd. in 322 ITR 158 (SC) as the facts of the case are totally different from the instant case.*
 3. *The order of the CIT(A) is erroneous and is not tenable on facts in law.*
 4. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*
2. Briefly stated facts are that scrutiny of the return of income of the assessee under section 143(3) of the Income Tax Act, 1961 (in short "Act"), the AO made

certain additions. In appeal, Ld.CIT(A) sustained the addition of Rs.13,90,937/- on account of disallowance u/s 40A(3) of the Act. Penalty proceedings u/s 271(1)(c) of the Act were initiated and the AO vide order dated 21.03.2013 concluded the same with the levy of penalty of Rs.4,68,190/-. However, in appeal Ld.CIT(A) found on facts that there is no concealment of particulars of income or furnishing inaccurate particulars of the same, inasmuch as all the expenses were reflected in the seized documents and duly accounted in the books of accounts and the source of the same was also duly explained. Ld.CIT(A) further found that disallowance of expenses u/s 40A(3) does not mean that the cash expenses were not genuine. Basing on these facts, Ld.CIT(A) applied the law declared by the Hon'ble Supreme Court in *CIT vs Reliance Petroproducts Pvt. Ltd.* [2010] 322 ITR 158 and deleted the penalty. Hence, the Revenue is in appeal before us.

3. It is the argument of the Ld. DR that Ld.CIT(A) committed an error in deleting the penalty and Ld. DR placed reliance on the orders of the authorities below whereas it is found from the order of Ld.CIT(A) that nothing was unearthed by the AO during the assessment proceedings and the additions made on account of disallowance u/s 40A(3) was purely on the basis of the details submitted by the assessee at the time of return of income only and that every addition will not automatically lead to the levy of penalty, and in the absence of the concealment of income or inaccurate particulars thereof, penalty u/s 271(1)(c) is not be justified as such the decision in *Reliance Petroproducts Pvt. Ltd.* (*supra*) is applicable to the facts of the case.

4. We have carefully gone through the record. Originally the additions were under three grounds namely Rs.14,86,584/- u/s 40A(3) of the Act; Rs.10 lacs u/s

40(1)(i)(a) and Rs.25 lacs on account of undisclosed income representing investment in property, but in appeal, Ld. CIT(A) sustained the disallowance of Rs.13,90,937/- u/s 40A(3) of the Act. Thereafter, on account of disallowance of Rs.13,90,937/-, the AO worked out the penalty at Rs.4,68,190/-. There is no allegation against the assessee that the assessee concealed any income particulars or furnished any inaccurate particulars thereof. The disallowance of expenditure u/s 40A(3) of the Act was only based on the particulars furnished by the assessee. Ld.CIT(A) is perfectly justified in his findings that the assessment proceedings and penalty proceedings are two different things and an issue may call for an addition to income u/s 143(3) of the Act but in the absence of any specific finding that there is concealment of income or furnishing of inaccurate particulars thereof, no proceedings u/s 271(1)(c) of the Act can be sustained. We are of the considered opinion that the decision in *Reliance Petroproducts Pvt. Ltd. (supra)* is applicable to the facts of the case and the Ld.CIT(A) is perfectly justified in deleting the penalty passing on such binding precedent. We, therefore, while upholding the findings of the Ld.CIT(A), dismissed the grounds of appeal.

5. In the result, the appeal filed by the Revenue is dismissed.

The order is pronounced in the open court on 17th October, 2017.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(K.N.CHARY)
JUDICIAL MEMBER**

Amit Kumar
Date:- 17.10.2017

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI