

**आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'बी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL ,**  
**'SMC' 'B' BENCH, CHENNAI**  
**श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष**  
**Before Shri A. Mohan Alankamony, Accountant Member**

आयकरअपीलसं./I.T.A.No.111/Mds/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. MSK Constructions P Ltd., D4, Golden Gate New, 33, Habibullah Road, T.Nagar, Chennai – 600 017.	Vs	The Deputy Commissioner of Income Tax, Company Circle IV(3), Chennai.
PAN: AAACM2608R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri A.S. Sriraman, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri R. Clement Ramesh Kumar, Addl. CIT

सुनवाईकीतारीख/Date of hearing	:	07.06.2017
घोषणाकीतारीख /Date of Pronouncement	:	09.06.2017

**आदेश / ORDER**

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-8, Chennai dated 11.12.2015 in ITA No.100/2014-15 for the assessment year 2011-12 passed u/s.250(6) r.w.s.271(1)(c) of the Act.

2. The assessee has raised several grounds in its appeal, however the crux of the issue is that the Ld.CIT(A) has erred in confirming the levy of penalty of Rs.4,31,783/- by the Ld.AO U/s.271(1)(c) of the Act without assigning proper reasons and justification.

4. The brief facts of the case are that the assessee is a private limited company engaged in the business of power generation through windmill, filed its return of income for the assessment year 2011-12 on 14.09.2011 admitting total income of Rs.7,88,240/-. Subsequently, the case was selected for scrutiny and thereafter assessment was completed u/s.143(3) of the Act on 21.02.2014, wherein the Ld. AO disallowed Rs.13,97,357/- U/s.37 of the Act being the expenditure claimed towards balance stamp charges with respect to the purchase of land. The assessee had paid the amount of Rs.13,97,357/- being the disputed stamp duty in order to release the purchase deed as the same had to be sold. The assessee treated it as revenue expenditure. However, the Ld.AO opined that the expenditure incurred towards stamp duty for purchase of immovable property viz., land, which was the fixed assets / investment of the company and not stock-in-trade, cannot be allowed as revenue expenditure as it was to be treated as capital expenditure since the expenditure is attributable for purchase of fixed assets / investment. Because the classification of expenditure was patently wrong, the Ld.AO opined that the assessee had concealed the particulars of its income as well as furnished

inaccurate particulars of such income and therefore levied penalty of Rs.4,31,783/- by invoking the provisions of Section 271(1)(c) of the Act.

5. On appeal, the Ld. CIT(A) confirmed the order of the Ld.AO by observing as under:

*“I have considered the observations of the Assessing Officer and the submissions of the appellant. As observed by the apex court in the case of CIT vs. Anwar Ali (76 ITR 696)(SC), it cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive for levy of penalty. However it should be considered to be good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and the assessee has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars. The appellant, in the return of income, claimed a sum of Rs.13,97,357/- as expenditure in the P & L Account towards disputed stamp duty of properties under the head “stamp duty and land sold”. As rightly pointed out by the Assessing Officer, it is a definite fact that the appellant is well aware that the expenditure was incurred in relation to fixed assets and was not an allowable expenditure under the head “Income from Business” as per the provisions of the Income Tax Act. The appellant, having known the facts and law, by claiming these expenses as business expenditure, furnished inaccurate particulars in the return of income. The Assessing Officer has rightly levied the penalty and the same is confirmed. The appellant fails on this ground.”*

6. Before us the Ld.AR argued stating that the assessee had not concealed the income because it had explicitly disclosed all the particulars in the P&L account. He further argued stating that the issue is debatable and therefore it is not a fit case for levy of penalty though the addition is sustained. The Ld.DR on the other hand vehemently argued in support of the Orders of the Revenue authorities.

7. We have heard the rival submissions and carefully perused the material on record. From the facts of the case, it is apparent that the assessee which is a private limited company has committed a mistake which is very obvious. The stamp duty paid by the assessee company is directly attributable towards purchase of land. Therefore, the expenditure incurred by the assessee has to be classified in the manner the asset is classified. The assessee company's books of account are also audited by Chartered Accountant. In this circumstances, we can only infer that there was an attempt by the assessee to wrongly claim the capital expenditure of Rs.13,97,357/- as revenue expenditure as pointed out by the Revenue authorities. There is no doubt that, but for the scrutiny assessment, the income would have escaped tax. Therefore, I do not find it necessary to

interfere with the order of the Revenue authorities with respect to levy of penalty. However I find that the revenue Authorities has wrongly computed the levy of penalty ie., “tax sought to be evaded” by the assessee, because the assessee had sold the land subsequently and declared Capital Gains. Hence tax sought to be evaded by the assessee will be the difference between of the rate of tax applicable to capital gains and business profit on Rs.1397357/-. Therefore we hereby direct the Ld.A.O to look into these aspects and accordingly rework the levy of penalty as per the provisions of the Act and thereby rectify the mistake if any.

8. In the result, the appeal of the assessee is partly allowed as indicated herein above.

Order pronounced in the court on the 09<sup>th</sup> June, 2017.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 09<sup>th</sup> June, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF