

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
ITA No.1496/Del/2015
Assessment Year : 2007-08**

Vijay Kumar, C/o. Dharam Pal Gupta, Adv. 7-Railway Road Karnal	Vs.	ITO, WARD-1, Karnal
PAN : AESPK1066J		
(Appellant)		(Respondent)

Assessee by : Sh. Permil Goel, Adv.
Revenue by : Sh. Amit Jain, Sr. DR
Date of hearing : 25-10-2017
Date of pronouncement : 27-10-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 13th March, 2014 of the CIT(A) - Karnal relating to assessment year 2007-08.

2. Levy of penalty of Rs. 8,82,754/- by the AO u/s 271(1)(c) of the IT Act which has been confirmed by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and engaged timber business. He filed his return of income on 26th October, 2007 declaring total income of Rs. 3,91,460/-. The AO vide order passed u/s 143(3) dated 18 December, 2009 completed the assessment on a total income of Rs. 43,34,130/- by making addition of Rs. 39,42,670/-. The basis of such addition

was adoption of higher GP rate of 4.90%. Subsequently, the AO initiated penalty proceedings and levied penalty of Rs. 8,82,754/- u/s 271(1)(c) of the IT Act which has been upheld by the CIT(A).

4. The Id. Counsel for the assessee submitted that the AO had adopted GP rate 4.9% which was reduced to 4% by the CIT(A) in quantum proceeding. On further appeal by the revenue as well as the assessed, the Tribunal vide ITA No. 478.Del.2012 CO no. 292.Del.2012 and ITA no. 719.Del.2012 order dated 8th September, 2015 for assessment year 2007-08 dismissed the appeal filed by the revenue as well as the cross objection filed by the assessee. So far as the appeal filed by the assessee is concerned, the Tribunal sustained adhoc disallowance of Rs. 2,00,000/- on estimate basis on account of possible leakage of revenue as against addition of Rs. 39,42,670/- made by the AO and partly confirmed by the CIT(A). He accordingly submitted that since substantial addition has been deleted by the Tribunal and only addition of Rs. 2,00,000/- on adhoc basis has been sustained, therefore, no penalty u/s 271(1)(c) is leviable. He accordingly submitted that the order of the CIT(A) be set aside and the grounds raised by the assessee should be allowed.

5. The Id. DR on the other hand heavily relied on the order of the CIT(A).

6. I have considered the rival arguments made by both the sides, perused the material available on record and the paper book filed on behalf of the assessee. I find the AO in the assessment order had made addition of Rs. 39,42,670/- which has been deleted by the Tribunal substantially and only adhoc addition Rs. 2,00,000/- on estimate basis has been sustained. Since the CIT(A) had passed the order on 13th March, 2014, he had no benefit of the order of the Tribunal deleting the substantial addition which was passed on 8th September, 2015. Since the major addition has already been deleted by the Tribunal and only an amount of Rs. 2,00,000/- on adhoc basis has been sustained, therefore,

in my opinion, penalty u/s 271(1)(c) of IT Act is not leviable. It has been held in various decisions that penalty 271(1)(c) of the Act is not leviable on estimated addition on adhoc basis. Since the Tribunal in instant case has deleted substantial addition made by the AO on account of GP addition and since only an amount of Rs. 2,00,000/- has been sustained on estimate basis, therefore, penalty u/s 271(1)(c) of IT Act , in my opinion, is not leviable in the instant case. I, therefore, set aside the order of the CIT(A) and direct the AO to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

7. In the result, the appeal filed by the assessee is allowed.

(Order pronounced in the Open Court on 27/10/2017.

Sd/-

(R. K. PANDA)

ACCOUNTANT MEMBER

Dated: 27-10-2017

Binita

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar

ITAT, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	25.10.2017		Sr. PS/PS
2	Draft placed before author	26.10.2017		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on	27.10.2017		Sr. PS/PS
7	Date of uploading of Order	.2017		Sr. PS/PS
8	File sent to Bench Clerk	.2017		Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			