

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri A.K.Garodia, AM & Shri George George K, JM

ITA No.1145/Bang/2017 : Asst.Year 2008-2009

Dy.Commissioner of Income-tax, Circle 7(1)(1) Bangalore.	Vs.	M/s.Tecnotree Convergence Limited 394-Phase-IV, Udhyog Vihar Gurgaon - 122 001.. PAN : AAACL7345L.
(Appellant)		(Respondent)

Appellant by : Shri Rajashekar Reddy L, CIT (DR)

Respondent by : Shri P.Dinesh, Advocate

Date of Hearing : 31.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 23.02.2017. The order of the CIT(A) arises out of the order imposing penalty u/s 271(1)(c) of the Act. The relevant assessment year is 2008-2009.

2. The solitary effective ground reads as follow:-

“Whether on the facts and circumstances of the case, the CIT(A) was justified in law in deleting the penalty levied after giving appeal effect to the order of the CIT(A), on the issues allowed in favour of Revenue?”

3. The briefly stated the facts of the case are as follows:-

3.1 The assessee is a company. For the assessment year 2008-2009 the return of income was filed on 31.03.2009

declaring total income of Rs.45,19,912 under the normal provisions of the Act and book profit under the provisions of section 115JB of the Act, were declared at Rs.20,18,82,080. Since the amount declared under the MAT provision was higher than the income declared under the normal provisions, the assessee paid the tax under the MAT provisions. The assessment was completed u/s 143(3) of the Act, by order dated 31.12.2010, wherein certain disallowances were made. Against the assessment order, the assessee preferred appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee.

3.2 With regard to the additions sustained by the first appellate authority, the Assessing Officer imposed penalty amounting to Rs.31,60,854.

3.3 Aggrieved by the imposition of penalty u/s 271(1)(c) of the Income-tax Act, the assessee preferred appeal to the first appellate authority. Before the first appellate authority it was submitted that while giving effect to the order of the CIT(A), the tax payable under the normal provision was below the MAT provisions, and therefore, no penalty can be levied going by the dictum laid down by the judgment of the Hon'ble Delhi High Court in the case of *CIT v. Nalwa Sons Investment Ltd.* reported in 327 ITR 543. The CIT(A) following the judgment of the Hon'ble Delhi High Court and taking notice of the Board Circular No.25/2015 dated 31.12.2015, deleted the penalty imposed u/s 271(1)(c) of the Act.

3.4 The Revenue being aggrieved has filed the present appeal before the Tribunal.

3.5 The learned Departmental Representative, apart from relying on the ground raised, submitted that with regard to the quantum assessment the Department has not accepted the first appellate authority's order and has preferred further appeal, and therefore, in the event the tax payable under the normal provisions are higher than the MAT provision, necessarily penalty u/s 271(1)(c) of the Act has to be imposed. The learned DR also referred to the Board Circular No.25/2015.

3.6 The learned AR, on the other hand, submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of *Nalwa Sons Investment Ltd. (supra)*. It was further submitted by the learned AR that the SLP preferred by the Revenue against the judgment of the Hon'ble Delhi High Court was dismissed by the Hon'ble Supreme Court (supra).

4. We have heard the rival submission and perused the material on record. The Hon'ble Delhi High Court in the case of *Nalwa Sons Investment Ltd.(supra)* held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty u/s 271(1)(c) of the Act could not be imposed with reference to additions / disallowances made under normal provisions. Subsequently, the provisions

of *Explanation 4* to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT u/s 115JB of the Act. The substituted *Explanation 4* is applicable prospectively w.e.f. 01.04.2016.

4.1 The CBDT Circular No.25/2015 had admitted that the substituted *Explanation 4* to section 271(1)(c) is applicable only prospectively. Since we are concerned with the assessment year 2008-2009, the amended provision will not have application to the facts of the present case. Therefore, we hold that the penalty is not attracted in the facts and circumstances of the instant case. It is ordered accordingly.

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

Order pronounced on this 03rd day of November, 2017.

Sd/-
(A.K.Garodia)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Bengaluru.
4. CIT(A)-15, Bengaluru
5. DR, ITAT, Bangalore
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)

ITAT, Bangalore