

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A. No. 328/DEL/2015	
	A.Y. : 2006-07	
M/S GOOD YEAR INDIA LIMITED, MATHURA ROAD, BALLABHGARH DISTRICT, FARIDABAD, HARYANA (PAN: AACCG3511H) <b>(APPELLANT)</b>	VS.	DCIT, CIRCLE 12(1), NEW DELHI  <b>(RESPONDENT)</b>

Assessee by : Sh. Manoneet Dalal, Adv. & Sh.  
Yishu Goel, CA  
Department by : Sh. Gaurav Dudeja, Sr. DR

**ORDER**

**PER H.S. SIDHU, JM**

Assessee has filed the appeal against the Order dated 31.10.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XX, New Delhi pertaining to assessment year 2006-07 on the following grounds:-

- I. *That on the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law and void-ab-initio.*
2. *That the Ld. CIT(A) has grossly erred on the facts and circumstances of the case and in law in*

*holding that Explanation 7 to Section 271(1)c is applicable and that the Transfer Pricing (TP) documentation of the appellant is faulty, misleading and prepared without proper care.*

3. *That the Ld. CIT(A) has erred in law as he failed to appreciate the fact that the view adopted by the appellant while claiming deduction for export incentives is supported by the decision of the Hon'ble Delhi ITAT in the case of Sony India (P) Ltd., ITA Nos. 1189/DEL/2005, 819/DEL/2007 & 820/DEL/2007 which clearly suggests that the claim of export incentives is a legal claim and being debatable. no penalty ought to be levied.*

4. *That the Ld. CJT(A) has erred on facts and circumstances of the case and in law as he failed to appreciate the fact that the corresponding appeal on merits of the appellant (on the issue of deductibility of export incentives) before the Hon'ble Delhi High Court against the decision of Hon'ble Delhi Tribunal is admitted and presently sub-judice before the Hon'ble Delhi High Court substantiating the fact that issue involved in the present case is a question of law.*

5. *Without prejudice to the above, the Ld. CIT(A) has erred in placing reliance on Supreme Court judgment in the matter of Union of India v Dharmendra Textiles Processors (306 ITR 277) to arrive at a conclusion that presence of mens-rea is not essential for levying penalty for concealment of income in complete ignorance of the fact that Supreme Court itself in its subsequent judgment in the case of UOI vs*

*Rajasthan Spinning and Weaving Mills (2009) had explained the Dharmendra Textiles judgement (supra) and has held that existence of mens-rea is essential for levying of penalty.*

*All of the above grounds of appeal are without prejudice and notwithstanding each other. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal. Any consequential relief, to which the appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted.*

2. The facts in brief are that Assessee filed return of income declaring an income of Rs. NIL after claiming set off of brought forward losses of Rs. 29,12,48,464/- (income from other sources being Rs. 1,15,24,490/-) on account of interest and Book Profit under section 115JB being (Rs. 24,59,03,850/-) on 28.11.2006. In this case assessment was completed at NIL income on 20.7.2010. While passing order u/s. 143(3) of the Act, the AO made addition of Rs. 1,131,13,182/- on account of Arm's Length Price as the assessee company reduced the amount of Rs. 78,72,603/- on account of export incentive and Rs. 33,21,586/- on account of rebate and discount from sales price for arriving at Arm's Length Price. While finalizing the assessment, penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 were also initiated by the AO on account of furnishing of inaccurate particulars of its income and also for concealing its income for the year under consideration by claiming export incentive

as deduction from cost of goods sold for arriving at Arm's Length price at Rs. 78,72,603/- under this section in terms of the provisions of section 271(1)© read with Explanation 1 and AO imposed the minimum penalty of Rs. 25,97,959/- vide his order dated 27.9.2013.

3. Aggrieved with the penalty order, the assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order 31.10.2014 dismissed the Appeal of the Assessee.

4. At the time of hearing, Ld. Counsel of the Assessee stated that AO while passing the penalty order held that issue of reducing export incentive of Rs. 78,72,603/- was not allowed for calculation of arm's length price and hence, penalty was imposed. In this regard he draw our attention towards Section 271(1)© which stipulates that "*has concealed the particulars of his income or furnished inaccurate particulars of such income.*" He further stated that the penalty is levied only if there is some income regarding which particulars mentioned are either inaccurate or concealed. Since, the determination of arm's length price in the appeal effect order has not lead to any transfer pricing adjustment, with no effect on income of the assessee, hence, penalty provisions are not applicable and therefore, the penalty may be deleted accordingly.

5. On the other hand, Ld. DR relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records. We find that in this case the TPO has passed an order u/s 92CA(3) on 26.10.2009

wherein he has determined that an adjustment of Rs. 1,13,13,182/- should be made to the value of international transactions entered into by the assessee company. AO further initiated penalty proceeding under Section 271(1)(c). Before the Tribunal in merits proceedings, assessee took ground that AO/TPO erred on facts in law in making adjustment of Rs. 1,13,13,182 on account of the alleged differences in the arm's length price of international transaction entered into by the assessee with associate enterprises. Assessee argued that TPO erred by not reducing export incentive amounting to Rs. 78,72,603 and rebate received amounting to Rs. 33,21,586 from the cost of goods sold for computing gross profit margin for determining the arm's length price. However, on the first issue, in the quantum proceeding, the ITAT vide its order dated 14.1.2012 passed in ITA No. 4360/Del/2010 in assessee's own case for the AY 2006-07 vide para no. 11.10 has held that export incentive amounting to Rs. 78,72,603/- cannot be deducted from cost of goods sold and on the second issue of deducting 33,21,586, the ITAT in para 12.2 held that rebate amount was netted off and net amount of purchase cost shown in the profit and loss account. Hence, the issue regarding verification of netting off rebate from the cost of purchase was remitted to the file of Assessing Officer. While giving effect to ITAT order, after considering verification of net off the entire transfer pricing adjustment of Rs. 1,13,13,182 was deleted. We further find that AO while passing the penalty order held that issue of reducing export incentive of Rs. 78,72,603 was not allowed for calculation of arm's length price and

hence, penalty was imposed. As per the relevant provisions, the penalty is levied only if there is some income regarding which particulars mentioned are either inaccurate or concealed. Since, the determination of arm's length price in the appeal effect order has not lead to any transfer pricing adjustment, with no effect on income of the assessee, hence, penalty provisions are not applicable in this case, therefore, we cancel the orders of the authorities below thereby deleting the penalty in dispute.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 04/12/2017.

**Sd/-**

**[L.P. SAHU]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 04/12/2017*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,  
ITAT, Delhi Benches

