

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

I.T.A. Nos. 5319 to 5323/Del/2014 & ITA No. 5330/Del/2014	
A.Yrs. : 2004-05 to 2009-10	
DCIT, CIRCLE 7(1), NEW DELHI ROOM NO. 238A, 2 ND FLOOR, C.R. BUILDING, I.P. ESTATE, NEW DELHI (APPELLANT)	VS. M/S S.V. LIQUOR (INDIA) LTD., J-17, VIKAS PURI, NEW DELHI (PAN: AAACS1989B) (RESPONDENT)

Department by : Sh. S.S. Rana, CIT(DR)
Assessee by : Sh. Rupender Kr. Aggarwal,
Adv.

ORDER

PER H.S. SIDHU, JM

Revenue has filed these 06 Appeals against the respective Orders of the Ld. Commissioner of Income Tax (Appeals)-X, New Delhi pertaining to assessment years 2004-05 to 2009-10. Since the issues involved in these appeals are identical and common, hence, the appeals were heard together

and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 5319/Del/2014 (AY 2004-05). The following grounds have been raised in assessment year 2004-05)

1. The Ld. CIT(A) has erred on facts and in law in cancelling the penalty of Rs. 17,93,750/- imposed by the AO u/s. 271(1)(c) of the I.T. Act, 1961.
2. The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

2. In other 05 Appeals, identical issues are involved and similar grounds have been raised, the only difference is in the figures involved.

3. The brief facts of the case are that a search u/s 132(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) was conducted on 14-10-2008 in S.V.P. Group during which the office premises of SVP. Builders India Ltd. & Associates Company & Residential premises of the Directors & their relatives were covered. The SVP Group of companies was engaged in the business of construction of residential,

commercial and business complexes alongwith sale / purchase of lands. AO observed that the group had been charging on money on the sale of flats, shops etc. which was not accounted for in the regular books of accounts. Usually this on-money was taken in cash which in turn was routed back into the group of companies in the form of share application/unsecured loans, share capital etc. The unaccounted money routed through this channel was reinvested in the purchase of further lands and for new projects. The share application money received in cash was also utilized for booking bogus expenses as site development charges for inflating the cost of construction to bring down its profits. Accordingly, notice u/s 153A of the Act was issued to the assessee on 14-05-2010 after duly recording satisfaction. In response thereto return of income was filed on 04-06-2010 showing taxable income at Rs.1,78,720/-. The assessment order u/s 153A(b) of the Act read with section 143(3) of the IT Act was passed on 30-12-2010 after making certain additions/disallowances and penalty proceedings u/s 271(1)(c) of the Act were initiated. Since the assessee could not prove that it has not concealed the true particulars of its income to the extent of Rs.50,00,000/- with a view to evade

taxes, penalty order u/s. 271(1)(c) of the Act was passed levying a penalty of Rs. 17,93,750/- vide order dated 24-3-2014. Against the penalty order dated 24.3.2014, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 18.7.2014 has deleted the penalty in dispute by allowing the appeal of the assessee. Aggrieved with the impugned order, the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the order of the AO.

5. On the other hand, Ld. A.R. of the Assessee relied upon the order of the Ld. CIT(A) and has stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference. Further, Ld. A.R. of the Assessee stated that quantum on which the penalty has been imposed, has already been deleted by the ITAT vide its order dated 29.4.2014. He has filed the copy of the said Tribunal's order dated 29.4.2014. He further stated that against the Tribunal's order dated 29.4.2014, the Department went in appeal before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide its order dated 15.12.2015 has dismissed the Appeal of the Department. Therefore, in view of the facts penalty

u/s. 271(1)(c) of the Act imposed by the AO in all the 06 years has been cancelled by the Ld. CIT(A) vide impugned order which is being contested in this appeal.

6. We have carefully considered the submissions and perused the records especially the impugned order. We find considerable cogency in the assessee's A.R. submissions that the quantum on which the penalty has been imposed, has already been deleted by the ITAT vide its order dated 29.4.2014. We further find that against the Tribunal's order dated 29.4.2014, the Department went in appeal before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide its order dated 15.12.2015 has dismissed the Appeal of the Department. Therefore, in view of the facts penalty u/s. 271(1)(c) imposed by the AO in all the 06 years, has been rightly cancelled by the Ld. CIT(A) his vide impugned order dated 18.7.2014 vide para no. 6(i) of his order dated 18.7.2014. The relevant portion of para 6(i) are reproduced as under:-

".....However, the Hon'ble ITAT vide their decision in ITA No. 4251/Del/2012 dated

29.4.2014 has deleted the entire addition holding that the necessary onus has been discharged by the appellant company and, therefore, the addition u/s. 68 of the Act made by the AO was directed to be deleted. Since there remains no basis for imposing the penalty u/s. 271(1)(c) of the Act, in view of the decision of Hon'ble Supreme Court in the case of M/s KC Builders vs. ACIT (Supra), the penalty u/s. 271(1)© of the Act imposed on the appellant is not justified and the same is hereby cancelled....."

7. Keeping in view of the facts and circumstances of the case, we do not find any infirmity in the order of the Ld. CIT(A), hence, we uphold the same and reject the grounds raised by the Revenue by dismissing the Appeal filed by the Revenue.

8. As regards the other 05 appeals are concerned, following the consistent view as taken in ITA 5319/Del/2014 (AY 2004-05), as aforesaid, we uphold the order of the Ld. CIT(A) on the

issue of deletion of addition in dispute in other 05 Appeals being ITA Nos. 5320, 5321, 5322, 5323 & 5330/Del/2014 (Ayrs. 2005-06 to 2009-10) and reject the grounds raised by the Revenue by dismissing other 05 Appeals also.

9. In the result, all the 06 appeals filed by the Revenue stand dismissed.

Order pronounced on 06/12/2017.

Sd/-

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

Sd/-

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

Date 06/12/2017

“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