

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.2962/Del./2017
Assessment Year 2011-2012

M/s. Craftpac Containers Pvt. Ltd., M-259, Greater Kailash-II, New Delhi 110048 PAN AAACC0305M (Appellant)	vs.,	The Income Tax Officer, Ward-3(4), New Delhi. (Respondent)
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For Assessee :	Shri Ashish Goel, C.A.
For Revenue :	Ms. Ashima Neb, Sr. D.R.

Date of Hearing :	05.12.2017
Date of Pronouncement :	07.12.2017

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee-company has been directed against the order of the Ld. CIT(A)-2, New Delhi, dated 28th February, 2017, for A.Y. 2011-2012, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly, the facts of the case are that assessment in this case was completed under section 143(3) of the I.T. Act on 28th

February, 2014, at an income of Rs.1,32,71,231 after making addition of Rs.1,00,35,866 on account of deemed dividend applying the provisions of Section 2(22)(e) of the I.T. Act. The assessee filed appeal before Ld. CIT(A) challenging the above addition. The Ld. CIT(A) vide order dated 12th October, 2016 deleted the protective addition of Rs.1,00,35,866 under section 2(22)(e) of the I.T. Act. However, the income of the assessee-company was enhanced by Rs.4 crores by Ld. CIT(A) vide the same order dated 12th October, 2016. Penalty proceedings under section 271(1)(c) of the Act were also initiated in the same order. The Ld. CIT(A) vide impugned order dated 28th February, 2017 in the absence of any explanation from the side of the assessee-company levied penalty under section 271(1)(c) of the I.T. Act on the addition of Rs.4 crores made above.

3. The Learned Counsel for the Assessee submitted that the quantum order of the Ld. CIT(A) dated 12th October, 2016 whereby addition was enhanced by Rs.4 crores was subject matter in appeal before ITAT 'B' Bench in ITA.No.547/Del./2017 for A.Y. 2011-2012 and vide order dated 28th August, 2017, the addition of Rs.4 crores have been deleted by the Tribunal. Copy of the order is placed on

record. He has, therefore, submitted that since addition have been deleted, therefore, penalty would not survive.

4. The Ld. D.R. did not dispute that addition of Rs.4 crores on which penalty have been levied, has been deleted by the ITAT, Delhi Bench in the case of the assessee-company.

5. After considering the submissions of both the parties, we are of the view that penalty under section 271(1)(c) of the Act would not survive in the facts and circumstances of the case. The penalty order levied by the Ld. CIT(A) on the basis of addition made at Rs.4 crores while passing the appellate order dated 12th October, 2016. The penalty was initiated on the addition of Rs.4 crores which have ultimately been deleted by the Tribunal vide order dated 28th August, 2017. Therefore, nothing survive in favour of the Revenue so as to levy penalty under section 271(1)(c) of the Act. In view of the above, we set aside the orders of the authorities below and cancel the penalty under section 271(1)(c) of the Act.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 07th December, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

ASST. REGISTRAR : ITAT :
DELHI BENCHES : DELHI.