

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. G.D.AGARWAL, PRESIDENT  
AND SH. KUL BHARAT, JUDICIAL MEMBER  
ITA No. 5724/Del./2014 : Asstt. Year : 2007-08**

|   |    |                                  |
|---|----|----------------------------------|
| Shivriem Megamarts Private Limited<br>W-10/15, Western Avenue,<br>Sainik Farms<br>New Delhi<br>PAN : AAGCS4968N | Vs | DCIT<br>Circle-8(1)<br>New Delhi |
| <b>(APPELLANT)</b>  |    | <b>(RESPONDENT)</b>              |

**Appellant by : Sh. Satyajit Goel, Adv.  
Respondent by : Sh. Kaushlendra Tiwari, Sr. DR**

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| <b>Date of Hearing : 22.02.2018</b> | <b>Date of Pronouncement : 23.02.2018</b> |
|-------------------------------------|---|

**ORDER**

**PER KULBHARAT, J.M.**

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – XI, New Delhi dated 19.08.2014 pertaining to assessment year 2007-08.

2. The assessee has raised following grounds of appeal :-

*“1. That the order of the learned appellate authority is arbitrary and against law and facts of the case.*

*2. The Learned Commissioner of Income Tax (Appeals)-XI has wrongly, arbitrarily and without appreciating the facts of the*

*case, confirmed the penalty u/s 271(1)(c) of the Act on addition of Rs. 28,48,615/- by estimated increase of Gross Profit @ 10% on trading results of the Company.”*

3. The only effective ground is against confirmity the penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). In respect of addition made on the basis of estimation of gross profit @ 10% on trading results of the company.

4. Facts in brief are that the assessment u/s 143(3) of the Income Tax Act, 1961 of the Act by framing the assessment. The assessing officer made additions in respect of estimation gross profit disallowance of depreciation disallowance of contribution of employees provident fund and the expenses payable. On appeal to the Ld. CIT(A) confirmed the addition on account of gross profit of Rs. 29,48,615/-. In respect of depreciation on account of expenses payable of Rs. 7,64,593/-. The assessing officer imposed penalty on this additions sustained by the Ld. CIT(A).

5. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the appeal thereby the ld. CIT(A) deleted the penalty in respect of disallowance of depreciation and EPF. Aggrieved by this, the assessee has preferred present appeal.

6. Ld. Counsel for the assessee submitted that the penalty has been sustained on the addition made on estimated basis. Ld. Counsel submitted that under the identical facts the Hon’ble High Court of Delhi decided the issue in favour of the assessee. On the contrary, ld. Departmental Representative supported the order of the authorities below and reiterated the submissions as made in the written submission.

7. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities below. The revenue has

not disputed the facts that the profit of the assessee was estimated and penalty is sustained on this amount of profit estimated by the assessing officer. Ld. Counsel for the assessee has placed reliance of the judgment of Hon'ble Delhi High Court rendered in case of Commissioner of Income Tax vs. Aero Traders Pvt. Ltd. (2010)322 ITR316 (Delhi) further The Hon'ble High Court in the case of CIT vs. Nokia India Pvt. Ltd. (supra) has held as under :-

*“6. It may be noted that in the next assessment year 2001-02, the total amount claimed by the assessee under the head “Provision for obsolescence of inventory” was Rs. 35,575/-. While the Assessing Officer disallowed the entire amount, the Commissioner of Income-tax (Appeals) reduced the disallowance to 25 per cent, thereof, amounting to Rs. 8,894/-. The said disallowance has been affirmed by the Income-tax Appellate Tribunal and the High Court.*

*7. The Tribunal, while dealing with the question of penalty under section 271(1)(c) on **the** ground of obsolescence, has held as under (page 801 of 10 ITR (Trib) :*

*“We have heard both the parties and have carefully gone through the orders of the authorities below.*

*It is not in dispute that disallowance has been made by the Revenue only to the extent of 25 per cent, of the total claim on account of provision for obsolescences of inventory amounting to Rs.4,94,66,656. In other words, the Assessing Officer has allowed 75 per cent, of the claim and disallowed only 25 per cent, thereof.*

*The Assessing Officer has disallowed 25 per cent, of the claim on the ground that the old model could easily be sold in the market to the customers since the customers of this line also purchased old model even after launching new model in the market. This makes it clear that the assessee's claim has not been fully rejected. It is only on estimate that the Assessing Officer has disallowed 25 per*

*cent. of the total claim. The Assessing Officer has not given any such finding that the assessee's claim was otherwise a false claim. The addition made by the Assessing Officer could at best be considered due in difference of opinion between the assessee and the Department but cannot be said to be a claim of such a nature which could be considered to be false and in respect of which the penalty under section 271(l)(c) is to be levied. We, therefore, uphold the order of the learned Commissioner of Income-tax (Appeals) in deleting the penalty on this item also."*

*8. Looking at the reasoning given by the Income-tax Appellate Tribunal, nature of disallowance and the finding of the Assessing Officer/Commissioner of Income-tax (Appeals) making ad hoc disallowance of 25 per cent., we do not think any substantial question of law arises in the present appeals and the same are accordingly dismissed."*

8. We, therefore, respectfully following the same, direct the assessing officer to delete this penalty.

9. In the result, the grounds of the assessee's appeal are allowed.

(Order Pronounced in the Open Court on 23/02/2018).

Sd/-  
**(G.D.AGARWAL)**  
**PRESIDENT**

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Dated: 23/ 02/2018**

**\*BINITA\***

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

**ASSISTANT REGISTRAR**

|     |  | Date       | <u>Initial</u> |  |
|-----|--|------------|----------------|--|
| 1.  | Draft dictated on                                | 22.02.2018 |                |  |
| 2.  | Draft placed before author                       | 22.02.2018 |                |  |
| 3.  | Draft proposed & placed before the second member |            |                |  |
| 4.  | Draft discussed/approved by Second Member.       |            |                |  |
| 5.  | Approved Draft comes to the Sr.PS/PS             |            |                |  |
| 6.  | Kept for pronouncement on                        | 23.02.2018 |                |  |
| 7.  | File sent to the Bench Clerk                     |            |                |  |
| 8.  | Date on which file goes to the AR                |            |                |  |
| 9.  | Date on which file goes to the Head Clerk.       |            |                |  |
| 10. | Date of dispatch of Order.                       |            |                |  |