

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 630/DEL/2016 (A.Y 2011-12)

DCIT Circle-12(2), Room No. 405 C. R. Building New Delhi (APPELLANT)	Vs	Inter Globe Hotels Pvt. Ltd. 124, GF, Central Wing, Thapar House, Janpath New Delhi AABCI2732H (RESPONDENT)
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Appellant by	Sh. S.R. Senapati, Sr DR
Respondent by	Ms. Shashi Arora, CA

Date of Hearing	07.02.2018
Date of Pronouncement	27.02.2018

ORDER

PER SUCHITRA KAMBLE

This appeal has been filed by the Revenue against the order dated 16/11/2015 passed by CIT(A)-4, New Delhi.

2. The grounds of appeal are as under:-

1. *“On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the penalty of Rs. 99,91,000/- imposed u/s 271(l)(c) of the IT Act.*
2. *On the facts and circumstances of the case and in law, Ld. CIT(A) erred in disregarding the fact as brought in AO’s order u/s 271(1)(c) that the assessee revised the return of the income in view of the AO’s query with respect to reduction in income.*

3. *On the facts and circumstances of the case and in law, Ld. CIT(A) erred in concluding that assessee revised the return suo moto ignoring the facts as brought out by the AO in its order u/s 271(l)(c) that return of income has been revised in response to AO's query with respect to fall in its income and that the revision of return is not "Suo - Moto" as claimed by the assessee.*
4. *The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of appeal."*

3. The assessee is a company engaged in business of running hotel and services. The assessee e-filed its return on 30/09/2011 declaring total loss of Rs.13,63,24,167/-. The return was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny and notice u/s 143(2) of the I.T act dated 22/8/2012 was issued and served upon the assessee company. Due to change of incumbent notice u/s 143(2) of the Income Tax Act along with a questionnaire u/s 142(1) of the Act dated 7/8/2013 were issued and served upon the assessee company. In response to the notices CA and authorized representative of the assessee company attended and furnished the details called for. The assessment was completed u/s 143(3) on 10/03/2014 determining the total loss of the assessee company at Rs.10,64,10,501/- as against return loss of Rs.13,63,24,166/-. At the time of completing the assessment additions of Rs.2,98,63,665/- was made on account of excess claim of loss of Rs.2,98,63,665/-. During the course of assessment proceedings the assessee company was required to file computation of income with explanation on each item reducing the total income. The Assessing Officer noticed that the assessee company had claimed depreciation of Rs.2,98,63,665/- twice and to that extent it has increased the loss in the return of income. Since the assessee furnished inaccurate particulars of its

income as per the Assessing Officer, penalty proceedings u/s 271(1)(C) were also initiated. A show cause notice dated 22/09/2014 was issued to the assessee company providing an opportunity of being heard. The said notice was duly served upon the assessee company. The assessee company filed a letter dated 24/09/2014 along with a copy of submission dated 15/09/2014. In the submission the assessee pointed out that as soon as the assessee company realized that there was excess claim of loss by Rs.2,98,63,665/-. The assessee company had suo moto filed revised computation of income reducing the loss to Rs.10,64,10,501/-. It was further emphasized by the assessee that the mistake was occurred at the instance of consultant for which the assessee company should not be suffered. The Assessing Officer while passing penalty order u/s 271(1)(C) observed that the claim of the assessee was suo moto revised while making computation of income is totally wrong in view of the fact that this case was selected under scrutiny and the Assessing Officer asked the assessee to explain its claim of reducing the total income. At the instance of the Assessing Officer the assessee had come forward to revise its computation and reduced the loss claimed twice. Had the case of the assessee been not selected in scrutiny, the assessee would have evaded the tax on the excess loss claimed in the return to be adjusted again future years income. Therefore, the Assessing Officer satisfied that this was a fit case for levying penalty within the meaning of Section 271(1)(C) of the Income Tax Act, 1961. The Assessing Officer further held that the assessee's case is covered under Explanation 2 to Section 271(1)(C) of the Income Tax Act and imposed a penalty of Rs.99,91,000/-.

4. Being aggrieved by the said penalty order the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting the penalty, despite the finding of the Assessing Officer that the assessee company had come forward to revise its computation and reduced the loss claim twice after

the case was selected under scrutiny. The Ld. DR further submits that the assessee furnished inaccurate particulars of its income and increased the profit to be adjusted against future years income. Thus, the assessee evaded the tax on the excess loss claimed in the return to be adjusted against future years income. The CIT(A) erred in concluded that the assessee revised the return suo moto. Once the A.O has issued scrutiny and there is a query with respect to fallen in its income. The revision of return is not suo moto as claimed by the assessee.

6. The Ld. AR relied upon the order of the CIT(A) and submitted that the assessee has suo moto revised the computation of the income as the tax auditors and the tax consultants who had prepared the return of income were different persons. The Ld. AR further submitted that due to the last minute rush between the tax on the finding and the return of income filing dead line inadvertently excessive loss was claimed by the assessee company. But the same was surrendered accordingly by the assessee. The Ld. AR further submitted that as the assessment proceedings for the special assessment year were going on u/s 143(2) of the Act, after realising the error the assessee vide its submission dated December 13th, 2013 suo moto before the Assessing Office offered the amount of Rs.2,98,63,655/- for disallowance. The Ld. AR further submitted that the Assessing Officer while passing the assessment order for the present assessment year accepted the suo moto disclosure made by the assessee without any other adverse findings in the revised computation of income filed by the assessee for the special assessment year. Considering the fact of the case and bonafide intention of the assessee, the Assessing Officer agreed to the submissions made by the assessee and the assessment order was passed u/s 143(3) of the act on March 10th, 2014 wherein an amount of Rs.2,98,63,665/- was disallowed and apart from it no other addition or disallowance was made by the Assessing Officer while concluding the assessment proceedings.

7. We have heard both the parties and perused the material available on record. The CIT(A) has given a finding that the assessee had suo moto revised the computation of the income and after that only the Assessing Officer had taking the cognizance of facts. Secondly, the depreciation of Rs.2,98,63,665/- was surrendered by the assessee due to the tax audit report u/s 44AB as this deduction was worked out by the auditor in the computation of deduction u/s 80 ID. The Assessing Officer had not taken a cognizance of this fact and did not consider the tax audit report. In view of the overall losses, the assessee company did not claim the deduction u/s 80ID. Therefore, it is obvious that the assessee did not furnish any inaccurate particulars of income nor did it conceal any particulars of income. The fact that the Assessing Officer accepted the suo moto disclosure made by the assessee by pointing out in the assessment year that the claim by the assessee company to the tune of Rs.2,98,63,665/- was surrendered as mentioned in Para 4 of the Assessment Order without giving any adverse findings in the revised computation of income filed by the assessee. Thus, the assessee has made out a bonafide intention of the assessee and there is no inaccurate furnishing of particulars or concealment of income. Therefore, there is no need to interfere with the finding of the CIT(A). The appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 27th FEBRUARY, 2019.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 27/02/2018

R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	26/02/2018	PS
2.	Draft placed before author	26/02/2018	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	27.02.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	28.02.2018	PS
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.		

