

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 5953/Mum/2016**

(A.Y. 2009-10)

Pratham Telecom India Pvt. Ltd. 201, Shyam Baba House, Upper Govind Nagar, Malad East, Mumbai-400 097	Vs.	The Dy. Commissioner of Income Tax, Circle 13(1)(2), 218, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AADCP8441Q</b>		

**Assessee by** : Narayan Atal, AR

**Revenue by** : Rajat Mittal, DR

**Date of hearing:** 15-03-2018 **Date of pronouncement :** 15-03-2018

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax-21, Mumbai [in short CIT(A)], in appeal No. CIT(A)-21/DCIT-13(1)(2)/IT-391/2015-16 dated 22-08-2016. The Assessment was framed by the Deputy Commissioner of Income Tax, Circle-9(2), Mumbai (in short 'DCIT) for the A.Y. 2009-10 vide order dated 28-12-2011 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act'). The penalty was levied by DCIT, Circle-13(1)(2), Mumbai vide order dated 30.11.2015 under section 271(1)(c) of the Act.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the penalty levied by AO under section 271(1)(c) of the Act. For this the assessee has raised the following two grounds: -.



"1. The learned Commissioner of Income Tax (Appeals)-21, Mumbai hereinafter referred to as CIT(A) erred in confirming the Penalty of ₹ 49,28,550/- levied by the DY. CIT 13(1)(2) under section 271(1)(c) of the Income Tax Act, 1961,

Your appellant submits that on the facts and circumstances of the case and in law, the penalty under section 271(1)(c) of the Act is not warranted and ought to be cancelled.

2. the CIT(A) erred in not giving proper opportunity to represent the case and pass the order ex-parte without taking into consideration all the facts leading to the levy of penalty and various judicial pronouncements against the levy of penalty."

3. At the outset, it is noticed that the order of CIT(A) is ex-parte. We also find that the CIT(A) has fixed the appeal of many occasions but none was present. We can understand the pain of the CIT(A) in deciding the issue ex-pate. Further, we have gone through the operative para of CIT(A) i.e. para 6, dismissing the appeal upholding the order of AO levying the penalty under section 271(1)(c) of the Act and the same reads as under: -.

"6. The addition on which the penalty has been levied is deemed income under section 68 of the I.T. Act, 1961. The notice under section 133(6) sent to the impugned lender were returned by the postal authorities as unserved. Despite various opportunities appellant could not show the unsecured loan to be genuine. This addition u/s.68



*has been upheld not only by Ld. CIT(A) but also by the Hon'ble ITAT. Thus its finding of the fact that unsecured loan are bogus. It is appellant's own money which has been routed back to the Company. In the circumstances the levy of penalty u/s.27 1(l)(c) is upheld."*

4. When this above para was confronted to the learned Sr. Departmental Representative he conceded that the CIT(A) has not decided the issue on merits and without speaking order. After hearing both the sides and going through the facts, we restore this issue back to the file of the CIT(A) for fresh adjudication, who will decide the appeal after allowing reasonable opportunity of being heard to the assessee.

**5. In the Result, the appeal of the Assessee is allowed for statistical purposes.**

Order pronounced in the open court on 15-03-2018.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 15-03-2018  
*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
  2. The Respondent.
  3. The CIT (A), Mumbai.
  4. CIT
  5. DR, ITAT, Mumbai
  6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar  
ITAT, MUMBAI