

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.4363/DEL/2014
Assessment Year: 2004-05

M/s. Kalinga International, 5/1, West Patel Nagar, New Delhi.	v.	ACIT, Circle-33(1), New Delhi.
TAN/PAN: AAAFK1235H		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri Amit Jain, Sr.D.R.
Date of hearing:	24 07 2018
Date of pronouncement:	31 07 2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 13.05.2014, passed by Ld. CIT (Appeals)-XXVI, New Delhi, in relation to penalty proceedings initiated u/s. 271(1)(c) for the Assessment Year 2004-05. The assessee is mainly aggrieved by levy of penalty of Rs.1,65,207/- levied on account of addition made in respect of sundry creditors for sums aggregating to Rs.5,50,690/- as appearing in the name of 19 parties.

2. The brief facts are that a survey was conducted at the business premises of the assessee on 13.02.2014 u/s.133A. During the course of survey, assessee has voluntarily offered

for taxation a sum of Rs.38,99,935/- being sundry creditors written off. It was further noted by the learned Assessing Officer that the assessee firm had offered a sum of Rs.5,50,690/- on account of various creditors whose confirmations could not be arranged due to paucity of time and due to time lag and closure of business. Assessee to avoid litigation, surrendered the amount outstanding in the name of various sundry creditors aggregating to Rs.5,50,690/-, that no penalty should be levied. The amount and details of such sundry creditors were as under:-

Name of Parties	Rs.
<i>i. M/s. India Light</i>	37559.00
<i>ii. M/s. Delhi Tent & Decorator</i>	16200.00
<i>iii. M/s. Design n Detail</i>	20871.00
<i>iv. M/s. Krishna Nagpal</i>	15000.00
<i>v. M/s. Maheshwari & Co.</i>	25000.00
<i>vi. Ramlal</i>	13130.00
<i>vii. Ramesh</i>	19960.00
<i>viii. M/s. Rawal Pindi Enbroidery</i>	25000.00
<i>ix. S. Polo</i>	14928.00
<i>x. Sanjay Kumar</i>	19960.00
<i>xi Shri Ram Investment Ltd.</i>	50500.00
<i>xii Shyam Lal</i>	19940.00
<i>xiii Sky Empire Ltd.</i>	66157.00
<i>xiv. Sundri Apparesl (I) Pvt. Ltd.</i>	36220.00
<i>xv. Uppal Builder</i>	29800.00
<i>xvi V. Shonkaron</i>	37156.00
<i>xvii Ved Pohaja & Associates</i>	11100.00
<i>xviii Vibhuti Financial Services (P) Ltd.</i>	44946.00
<i>xix Vivek Sharma</i>	<u>12000.00</u>
<i>Total</i>	<u>550690.00</u>

3. Penalty u/s 271(1)(c) has been levied by the Assessing Officer on the aforesaid amount of the sundry creditors offered by the assessee during the course of the assessment proceedings and penalty of Rs.1,65,207/- has been levied on the ground that assessee could not file confirmation to the said parties.

4. Ld. CIT (A) in the appellate proceedings again required the assessee to furnish complete address of the parties/ sundry creditors. However, the assessee could not furnish the same. Accordingly, the ld. CIT (A) after detailed discussion and relying upon the various judgments held that, *Explanation -1* of Section 271(1)(c) is clearly attracted and confirmed the penalty as levied by the Assessing Officer.

5. None appeared on behalf of the assessee despite service of notice; therefore, we are proceeding to decide the appeal on merits on the basis of material on record.

6. After hearing the learned Department Representative and on perusal of the impugned orders, we find that the assessee had offered sums aggregating to Rs.5,50,690/- standing in the balance sheet in the name of various sundry creditors. The assessee has offered to tax the outstanding amount against the sundry creditors on the ground that the confirmations could not be arranged; *firstly*, due to paucity of time; and *secondly*, since they are old creditors and due to closure of the assessee's business due to sealing activities of the MCD, the current addresses of these parties were not

available. Thus, the same amount was offered to buy peace and to avoid litigation on the ground that no penalty should be initiated. The amounts outstanding against various sundry creditors are coming from earlier years and simply due to lack of time and closure of business, confirmation could not be filed. Now, on same ground, the penalty has been levied by the Assessing Officer and also confirmed by the Id. CIT (A). Once, it is not disputed that these sundry creditors are coming from the earlier years and addition which has been made by invoking the provisions of **Section 41(1)** without there being actual write off of the sundry creditors, then, it cannot be presumed that there was any cessation of liability in this year. Under these facts it cannot be held that assessee had either furnished inaccurate particulars of income or concealed any parts of its income, because it is not a case that these creditors are appearing for the first time in this year for which assessee could not offer any explanation. If the old sundry creditors are appearing and the same amount are outstanding, one cannot reach to an inference that there is a cessation of liability in this year, and therefore, we are of the opinion that such an addition does not warrant any penalty u/s 271(1)(c). Accordingly, penalty cannot be levied on the ground that assessee has offered the same for taxation to avoid litigation and to buy peace, especially when assessee's business was closed. Accordingly, the penalty levied by the Assessing Officer and confirmed by the Id. CIT (A) is directed to be deleted.

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

Order pronounced in the open Court on 31st July, 2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 31st July, 2018

PKK: