

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI B.R.BASKARAN, AM AND SHRI RAVISH SOOD, JM**

ITA No. 668/Mum/2017

(निर्धारण वर्ष / Assessment Year:2012-13)

Galaxy Entertainment Corpn. Ltd. 4 th Floor, SOBO Central Mall, Near Haji Ali No. 28, Pt. Madan Mohan Malviya Road, Tardeo, Mumbai- 400 034	बनाम/ Vs.	Assistant Commissioner of Income tax, Central Circle-8(4), Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABCG2464J
(अपीलार्थी /Assessee)	:	(प्रत्यर्थी / Revenue)

अपीलार्थी की ओर से / Assessee by	:	Shri Aditya R. Ajgaonkar, Advocate
प्रत्यर्थी की ओर से / Revenue by	:	Shri Nishant Somaiya, D.R

सुनवाई की तारीख / Date of Hearing	:	13.08.2018
घोषणा की तारीख / Date of Pronouncement	:	13.08.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-50 Mumbai, dated 03.10.2016 which in itself arises from the order passed by the A.O under Sec.271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 21.08.2015.

2. Briefly stated, the assessee company had filed its return of income for A.Y 2012-13 on 27.09.2012 declaring total income of Rs. nil. The return of income was thereafter revised by the assessee on 10.12.2012 declaring the same income of Rs.nil. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that though the assessee had credited an amount of Rs.43,34,382/- on account of provision no longer required, however in the computation of income the aforesaid amount was deducted. On a query raised by the A.O as regards the deduction of the aforesaid amount of Rs.43,34,382/- while computing the total income, the assessee admitted that the same had inadvertently crept in on account of a mistake on the part of the junior accountant of the company. In the backdrop of the aforesaid facts the assessee requested that the aforesaid amount may be added back while working out its assessed income. On the basis of the aforesaid deliberations the A.O assessed the returned loss of the assessee company at Rs.6,41,57,440/-.

4. The A.O while culminating the assessment proceedings initiated penalty proceedings under Sec.271(1)(c) for furnishing of inaccurate particulars of income by the assessee in respect of the aforementioned addition of Rs.43,34,382/- and also issued a 'Show cause' notice (for short 'SCN') under Sec.274 r.w.s 271(1)(c) of even date to the assessee. Though, the assessee in the course of the penalty proceeding tried to impress upon the A.O that no penalty under Sec.271(1)(c) was liable to be imposed in its hands, however, the A.O not being persuaded to subscribe to the aforesaid claim of the assessee imposed a penalty of Rs.13,39,320/- under Sec. 271(1)(c) for furnishing of inaccurate of particulars of income, vide his order dated 21.08.2015.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee, did not find himself to be in agreement with the same and being of

the view that the assessee had concealed particulars of its income dismissed the appeal.

6. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal took us through the assessment order and submitted that while for the A.O had initiated penalty proceedings under Sec.271(1)(c) for furnishing of inaccurate particulars of income by the assessee, however, the SCN dated 27.02.2015 did not specify the default for which the assessee was called upon to show cause as to why penalty under the aforesaid statutory provision may not be imposed on it. The ld. A.R in order to fortify his aforesaid contention took us through the assessment order and the SCN (Page 75) of the assessee's paper book (for short 'APB'). Still further, it was submitted by the ld. A.R that though the A.O vide his order dated 21.08.2015 had imposed penalty for furnishing of inaccurate particulars of income by the assessee, however, on appeal the CIT(A) had sustained the imposition of penalty on the ground that the assessee had concealed particulars of its income. In the backdrop of the aforesaid facts, it was the contention of the ld. A.R that as the penalty order passed by the A.O had merged with that of the CIT(A), hence it could safely be concluded that while for the penalty proceedings were initiated by the A.O for furnishing of inaccurate particulars of income, however, the same as was discernible from the order of the CIT(A) had been imposed for concealment of income. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders passed by the lower authorities.

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have deliberated at length on the issue under consideration and find that though the A.O while framing the assessment had categorically initiated penalty proceedings for furnishing of inaccurate particulars of income by the assessee and had by his order passed under Sec.271(1)(c)

imposed the same for the said default, however, the CIT(A) by observing that the assessee was to be deemed to have concealed particulars of income, had thus upheld the same for a different default. We find from a perusal of the order of the CIT(A) that though he while recording the facts of the case had clearly observed that the AO had imposed penalty under Sec. 271(1)(c) for furnishing of inaccurate particulars of income by the assessee, but thereafter had dismissed the appeal for the reason that the assessee is to be deemed to have concealed particulars of income. We are of the considered view that as the order of the CIT(A) sustaining the penalty imposed by the A.O under Sec. 271(1)(c) for a default other than that for which the penalty was imposed on the assessee clearly suffers from an infirmity, therefore, the same cannot be upheld as such. We thus, refraining from adverting to the merits of the case, in all fairness restore the matter to the file of the CIT(A) for fresh adjudication. The CIT(A) is herein directed to re-adjudicate the issue after considering the merits of the case afresh. Needless to say, the assessee shall be afforded reasonable opportunity of being heard during the course of the set aside proceedings and would remain at a liberty to raise submissions in support of its claim that penalty imposed by the A.O under Sec. 271(1)(c) is not sustainable in its hands.

8. The appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 13.08.2018

Sd/-

Sd/-

(B.R. Baskaran)
ACCOUNTANT MEMBER

(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 13.08.2018

Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**