

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5122/Del/2016
Assessment year: 2006-07**

**OSWAL INDUSTRIAL ENTERPRISES PVT. LTD.
305, ANSAL BHAWAN,
16, KG MARG,
NEW DELHI - 01
(PAN: AAECA6617J)**

**VS. DCIT, CIRCLE 19(1)
NEW DELHI**

(APPELLANT)

(RESPONDENT)

Appellant by: Sh. Sanjay Gupta, CA
Respondent by: Sh. Gaurav Sharma, Sr. DR

**Date of hearing: 27.08.2018
Date of pronouncement: 31.08.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, JM

This appeal by the Assessee is directed against the order dated 28.2.2014 of the Ld. CIT(A)-XVIII, New Delhi relating to assessment year 2006-07 on the following grounds:-

1. *On facts and circumstances, the Ld. CIT(A) has erred in law in upholding the penalty of Rs. 11059252/- levied u/s. 271(1)(c).*
2. *The AO having issued the notice u/s. 274 read with section 271(1)© of the Act in a mechanical*

manner, the penalty order passed under section 271(1)© of the Act is not sustainable in the eye of law.

3. *The appellant begs to submit that the decision of Jurisdictional High Court in the case of CIT vs. Manjunathan and Ginning Factor (2013) 359 ITR 565 (Karn) is squarely applicable and therefore, the impugned order of the authorities below is required to be set aside.*
4. *That the appellant craves leave for permission to add, amend or alter any ground of appeal at the time of hearing.*

2. The facts in brief are that assessment in this case was completed u/s. 143(3) of the I.T. Act, 1961 on 11.12.2008 at Rs. 2,50,88,030/-. During the assessment proceedings three additions were made viz. Rs. 5,05,200/- on account of disallowance of excess pre-operative expenses; Rs. 1,33,45,000/- on account of addition of unverifiable sundry debtors and Rs. 3,28,12,770/- on account of addition on account of lower GP rate. Penalty proceedings u/s. 271(1)© were initiated on 11.12.2008. After receiving the reply from the Assessee, the AO observed that assessee has not furnished any explanation with regard to the additions in dispute so far as penalty proceedings u/s. 271(1)(1) is concerned. He further observed that during the assessment as well as appellate proceedings the Assessee was not able to prove its claim. Hence, he held that assessee has furnished inaccurate particulars of its income in respect of addition and accordingly imposed the penalty of Rs. 1,10,59,252/- being 100% of the tax sought to be evaded by the assessee vide order

dated 26.3.2015 passed u/s. 271(1)(c) of the Act. Against the aforesaid penalty order, the assessee appeal before the Ld. CIT(A), who vide his impugned order dated 28.02.2014 has partly allowed the appeal of the Assessee. Aggrieved, the Assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. A.R. for the Assessee, stated that the quantum additions has already been set aside to the file of the Ld. CIT(A) on which the penalty has been imposed, by the ITAT, New Delhi Coordinate Bench in ITA No. 3162/Del/2014 (AY 2006-07) vide Order dated 23.6.2017. In this behalf he filed the copy of the Tribunal's Order dated 23.6.2017 in assessee's own case and he requested that penalty in dispute may also be set aside to the file of Ld. CIT(A).

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have heard the rival submissions and perused the records. We find that in assessee's own case in ITA No. 3162/Del/2014 (AY 2006-07) vide Order dated 23.6.2017, the Coordinate Bench of Delhi Tribunal had set aside the quantum additions to the file of the Ld. CIT(A) vide para no. 11 at page 10 to 11 for deciding the same afresh in accordance with law, after giving adequate opportunity of being heard to the assessee. For the sake of convenience, we are reproducing the relevant portion of the Tribunal order dated 23.6.2017 as under:-

"11. We have considered the submissions of both the parties and carefully gone through the

material available on record. In the present case, it is noticed that the AO in the impugned order has not discussed the submissions of the assessee. He simply mentioned that the submissions of the assessee were forwarded to the AO for his remand report. Although relevant portion of the remand report submitted by the AO has been mentioned at page 4 of the impugned order but the submissions of the assessee were not incorporated in the impugned order. So, it is not clear as to whether the explanation submitted by the assessee was plausible or not. The Id. CIT (A) while confirming the addition made by the AO has stated that the explanation submitted by the assessee had not been found to be supported with evidence for such a decline in gross profit. However, it is not clear from that observation of the Id. CIT (A) that when the explanation submitted by the assessee was not brought on record how the conclusion has been drawn that those explanations were not acceptable. In our opinion, the impugned order passed by the Id. CIT (A) is a non-speaking order in the eyes of law. We, therefore, deem it proper to set aside this issue back to the file of the Id. CIT (A) to be adjudicated afresh in accordance with the law after providing due and reasonable opportunity of being heard to the assessee.

6. Keeping in view of the facts and circumstances of the case, we find that the quantum additions on which the penalty in dispute was imposed,

has already been set aside to the file of the Ld. CIT(A) for fresh adjudication in assessee's own case passed in ITA No. 3162/Del/2014 (AY 2006-07) vide Order dated 23.6.2017, as aforesaid, by the Coordinate Bench of Delhi Tribunal, hence, the penalty in dispute is also set aside to the file of the Ld. CIT(A) with the directions to decide the same afresh, in accordance with law.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 31.08.2018.

Sd/-

Sd/-

(G.D. AGRAWAL)
PRESIDENT

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31.08.2018

'SRBHATNAGAR'

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1. Appellant
2. Respondent
3. CIT 4.CIT(A)
4. DR, ITAT

By Order

ASSTT. REGISTRAR