

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

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.244/Del/2015
Assessment Year: 2007-08

DCIT, Circle -16(2), New Delhi	Vs.	MMTC Ltd., Core-1, Scope Complex-7, Industrial Area, Lodhi Road, New Delhi
PAN :AAACM1433F		
(Appellant)		(Respondent)

Appellant by	Sh. Gaurav Sharma, Sr.DR
Respondent by	Sh. Rohit Jain, Adv.

Date of hearing	30.08.2018
Date of pronouncement	31.08.2018

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against the order dated 21.10.2014 passed by the learned Commissioner of Income Tax (Appeals) VIII, New Delhi [in short 'CIT(A)'] for assessment year 2007-08 in relation to penalty levied by the Assessing Officer for furnishing inaccurate particulars of income. The grounds of appeal raised by the Revenue are reproduced as under:

- 1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the Penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), 1961?***

- 2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in not appreciating the complete factual matrix of the case?**
- 3. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.**
- 4. That the grounds of appeal are without prejudice to each other.**
- 5. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of the hearing.**

2. Briefly stated facts of the case are that consequent to completion of the case under Section 143(3) of the Income-tax Act, 1961 (for short 'the Act') on 13.12.2010, the total income was determined at Rs.1,10,18,19,450/-. The Assessing Officer while determining the total income made disallowance under Section 14A of Rs. 2,83,19,079/- and addition on account of DEPB of Rs.88,19,000/-. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act and issued notice under relevant provisions of the Act on 13.12.2010. On further appeal against the quantum proceedings, learned CIT(A) confirmed the disallowance under Section 14A of the Act, amounting to Rs. 35,64,547/- and deleted rest of the additions. After providing an opportunity of being heard to the assessee, the Assessing Officer levied penalty of Rs.11,99,827/- in respect of disallowance under Section 14A of the Act on 30.03.2013 @ 100% of the tax sought to be evaded.

2.1 On further appeal, the learned CIT(A) deleted the penalty in view of the finding that the addition was based on estimate. Aggrieved, the Revenue is in appeal before the Tribunal.

3. At the outset, the learned counsel of the assessee submitted that the tax effect involved in the instant appeal is being less than

the limit prescribed by the Central Board of Direct Taxes (CBDT), i.e., Rs.20 lakhs for filing appeal before the ITAT vide Circular No. 03 of 2018, dated 11th July, 2018. The learned counsel also pointed out that the addition in dispute in quantum proceedings has been restored back to the file of the Assessing Officer and, therefore, the penalty levied cannot survive.

4. The learned Sr. Departmental Representative, on the other hand, admitted that the tax effect involved in this case is less than the prescribed limit, i.e., 20 lakhs vide Circular No. 03 of 2018, dated 11th July, 2018. However, he sought opportunity to recall the order in case the appeal falls under exceptions provided under said Circular.

4.1 The learned Sr. Departmental Representative also could not controvert the fact that the addition in dispute has been restored back to the file of the Assessing Officer.

5. We have heard the rival submission and perused the relevant material on record. Admittedly, the tax effect involved in the appeal is less than the prescribed limit of Rs.20 lakhs for filing the appeal before the Tribunal vide Circular (supra) issued by the CBDT. We also find that the disallowance on which the penalty was levied has already been restored by the Tribunal in quantum proceedings to the file of the Assessing Officer in ITA No. 4187/Del/2011 (AY:2007-08). The relevant finding of the Tribunal is reproduced as under:

“24. This issue is identical to grounds taken in Asstt. Year 2006-07 on the issue of deduction u/s 14A by the assessee and Department and grounds raised by Department on DEPB issue. Therefore, for the

reasons given in asstt. Year 2006-07, the grounds raised by both the assessee as well as department in Asstt. Year 2007-08 are allowed for statistical purposes.”

6. In view of above, when the addition on which, the penalty was levied, itself has already been restored back to the file of the Assessing Officer for deciding afresh, the penalty levied on the said addition cannot survive. Thus, the penalty levied by the Assessing Officer is cancelled. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on 31st August, 2018

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st August, 2018

Copy forwarded to:

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

Sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

Asst. Registrar, ITAT, New Delhi