

**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.700/Del/2015
Assessment Year: 2008-09

M/s. Nuance BPO Matrix Pvt. Ltd., D-4, Commercial Complex, Vasant Vihar, New Delhi	Vs.	Income Tax Officer, Ward-13(3), New Delhi
PAN :AACCN0050G		
(Appellant)		(Respondent)

Assessee by	Sh. Ravi Khanna, CA & Ms. Vasundhra Dharni, CA
Department by	Sh. Gaurav Sharma, Sr.DR

Date of hearing	30.08.2018
Date of pronouncement	11.09.2018

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 19/11/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-6, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2008-09 in relation to penalty levied by the Assessing Officer for furnishing inaccurate particulars of the income. The grounds of appeal raised by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in upholding penalty under section 271(1)(c) of the Income Tax Act be deleted.*
2. *The appellant prays that the penalty imposed under Section 271(1)(c) of the Income Tax Act be deleted.*
3. *The appellant company craves to add, amend, alter, vary and/or withdraw any or all of the above grounds of appeal.*

2. The briefly stated facts of the case are that in the case of the assessee subsequent to filing of return of income, assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 26/11/2010 after making certain disallowances/additions. The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act. The assessee filed appeal before the Ld. CIT(A) against the additions made. The Ld. CIT(A) confirmed the disallowances of exemption under section 10A of the Act of Rs.12,85,778/-. In view of the disallowances sustained by the Ld. CIT(A), the Assessing Officer issued show cause notice to the assessee, as to why the penalty under section 271(1)(c) of the Act be not be levied for furnishing inaccurate particulars of income in respect of the disallowances sustained by the Ld. CIT(A). None attended before the Assessing Officer and accordingly, he levied penalty of Rs.4,01,684/- vide order dated 28/03/2013. On further appeal, the Ld. CIT(A) confirmed the penalty levied by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

3. At the outset, the learned counsel of the assessee submitted that the disallowances in respect of which the penalty was levied

by the Assessing Officer has been deleted by the Tribunal vide order dated 19/04/2016 in ITA No. 4307/Del/2011 and, thus, he requested that the penalty sustained by the Ld. CIT(A) cannot survive. The learned DR also could not controvert the contention of the learned counsel.

4. We have heard the rival submissions and perused the relevant material on record. The Assessing Officer in quantum proceedings did not consider the receipts by way of rent, office and other maintenance expenses including power and fuel expenses as part of the income from export of articles/things/software and accordingly denied deduction under section 10A of the Act on the said sum of receipt. He levied penalty in dispute in respect of the said disallowances of exemption under section 10A of the Act. The Tribunal in ITA No. 4307/Del/2011 deleted the quantum addition observing as under:

“6. We have perused the documents placed before us and orders passed by the authorities below and the judgment relied upon by the learned AR.

6.1. Admittedly the assessee is a registered STPJ. Unit. In the returns filed for the years under consideration the assessee had claimed certain income, as exempt from tax u/s 10A of the Act. These included rent receipt from M/s. Prologic First India P. Ltd., power and fuel expenses, office and other maintenance made in connection with the business processing and outsourcing activity carried on by the assessee. It is also not disputed that during the relevant years, the assessee had not provided services of data mining, charges for recruitment process, airline contract entry, software development, support, customer services and call seat charges. The Id.AO disallowed the claim of exemption in respect of the rental income received and the expenses incurred by the assessee, by way of fuel and power office maintenance etc., on the ground that they were not directly derived from the export business activity.

6.2. Let us first analyse the expenses incurred and income received from call seat charges in respect of local operations.

As rightly contended by the Ld.AR, the amount paid is not for acquiring any leasehold right by way of annual lease rent. These amounts are paid to M/s Hindustan Power, by assessee for continuing to enjoy the leasehold rights. In such a situation the assessee has not acquired any new capital asset, but merely maintains the capital asset already acquired.

6.3. As per the agreement between the assessee and M/s Prologic First India P. Ltd., the assessee, recovered towards electricity, water and generator maintenance by way of reimbursement. The assessee had incurred certain expenses on behalf of M/s. Prologic First India P. Ltd., which was reimbursed in the form of corporate charges and such receipts cannot be reduced, since the expenses are debited through P&L Account while computing profits of eligible undertaking. The Ld.AR submitted that the amount received by way of reimbursement thus, cannot be reduced from the profits of the business of eligible undertaking. These amounts did not represent any income or revenue which was being generated by the assessee. Respectfully following the decision of CIT Vs. Perott systems TSI India Ltd. (Supra), we hold that the lease rent paid being revenue in nature is allowable.

7.2.The Assessing Officer is, therefore, directed not to reduce the profits of the business by the amount of Rs.2,38,210/- and Rs.13,55,072/- for assessment years 2007-08 and 2008-09 respectively, received from M/s Prologic First India.

7.3.Accordingly, the ground numbers 3,3. land 3.2 for assessment year 2007-08 and ground numbers 2, 3 and 3.1, for assessment year 2008-09 raised by the assessee stands allowed.”

5. We find that the Tribunal has already directed the Assessing Officer to grant exemption in respect of the said receipts. In view of the above facts and circumstances, when the quantum addition has already been deleted, the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A), cannot survive. Accordingly, we cancel the same. The grounds of the appeal are accordingly allowed.

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

Order is pronounced in the open court on 11th Sept., 2018.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 11th September, 2018.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi