

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No. 6094/DEL/2015		
A.Y. : 2005-06		
JARODA PLANTATIONS PVT. LTD. F-0, GROUND FLOOR, THE MIRA CORPORATE SUITS, ISHWAR NAGAR, MATHURA ROAD, NEW DELHI - 110 065 (PAN: AAACJ 5252A)	VS.	INCOME TAX OFFICER, WARD-13(1), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. V.K. Garg, Adv.
Department by : Ms. Rashmita Jha, Sr. DR.

Date of Hearing : 25.09.2018

Date of Order : 27-09-2018

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the Assessee challenging the Order dated 24.01.2014 in Appeal No. 0166/2012-13 for assessment year 2007-08 passed by the Ld. Commissioner of Income Tax (Appeals)-VIII, New Delhi (in Short "Ld. CIT(A)") wherein the Ld. CIT(A) has upheld the penalty of Rs.

2,41,56,197/- made by the AO u/s. 271(1)(c) of the Income Tax Act, 1961 (In Short "Act").

2. Briefly stated facts are that the original assessment in this case was completed vide order dated 11.6.2017 at a total income at NIL as against the declared loss of Rs. (-) 67,824/- filed by assessee on 29.3.2006. Later, the assessment was set aside by the Ld. CIT-II, New Delhi vide order u/s. 263 of the Act dated 5.3.2010 on the ground that Capital gain on account of sale of land should have been considered for the purpose of calculating book profit u/s. 115JB of the Act. Accordingly, assessment was completed vide order u/s. 143(3)/263 of the I.T. Act, 1961 dated 27.12.2010 at a total income of Rs. 43,33,780/- u/s. 115JB as against originally assessed for a sum of Rs. 5,76,655/-. AO observed that during the course of assessment proceedings for A.Y. 2005-06 the assessee company had purchased one Agricultural Land in August, 1997 measuring 2.925 hect. situated at village Moaza Bpgarajpur, Pargana Khatauli Tehsil Jansth Distt. Muzaffar Nagar. Further 2 piece of land bearing Khasra No.1425/2, 1422 & 1409 M area 2.130 hect. situated at village Jaroda pargana, tehsil & Distt. Muzaffarnagar was taken in gift on 23rd day of April, 1999. 2nd piece of land which was owned in gift was sold in earlier years before this financial year (i.e.2003-04). But during the assessment year 2005-06 1st piece of land was sold. Cost of this piece of land was Rs.993365/-, as shown in the Schedule-C of the Balance Sheet for the financial year 2004-05. The long term capital gain on sale of above land was not routed through the profit and loss account and therefore tax liability was not computed

on this long term capital gain u/s 115JB. Accordingly, the AO initiated the penalty proceedings for furnishing inaccurate particulars of income and notice u/s. 274 read with section 271 was issued to the assessee on 22.12.2010, which was not responded by the assessee and accordingly, the assessee lost its appeal before the Ld. CIT(A) and thereafter before the Tribunal. Accordingly, to finalized the penalty proceedings, the assessee issued show cause notice on 31.10.2012 which was replied by the assessee. After considering the reply, the AO observed that the capital gain was not routed through the credit side of profit and loss account and also there was no mention in the notes of accounts in respect of such capital gain. Accordingly, AO held that assessee has concealed the particulars of its income and furnished inaccurate particulars of its income and levied the penalty vide his order dated 21.12.2012 passed u/s. 271(1)(c) of the Act. Aggrieved by the penalty order, the assessee appeal before the Ld. CIT(A), who vide his impugned order dated 05.8.2015 has enhanced the penalty to Rs. 5,53,824/- as against Rs. 2,76,912/- levied by the AO. Against the order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

3. Ld. AR for the assessee submitted that the addition in Book Profit of Rs. 35,31,500/- as confirmed by the ITAT in quantum appeal involves a highly debatable legal issue where two views are possible as also borne out from the order of ITAT. He further stated that AO while levying penalty in his order has himself noted the findings of the Tribunal as to the existence of two views of two different High Court. He further submitted that merely because the Tribunal has applied ITAT

Special Bench decision in the case of Rain Commodities Ltd. vs. DCIT 131 TTJ 514 (Hyd.), it does not take away the fact of existence of two views. He further stated that it is the settled law that there is no concealment of income or inaccurate particulars where the addition and/or disallowance is based on bona fide claims or debatable claims or difference of view, as is held inter alia by the Hon'ble Supreme Court of India in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., reported in 322 ITR 158 (SC). Lastly, he further submitted that the said penalty u/s. 271(1)(c) has been erroneously sustained and enhanced by Ld. CIT(A) without appreciating bona fides of the assessee, facts of the case and debatable nature of the issue involved. In view of above, he requested to delete the penalty in dispute.

4. Per contra, Ld. DR strongly relied upon the orders of the authorities below.

5. We have carefully gone through the records in the Appeal preferred by the Assessee challenging the quantum addition in ITA No. 420/Del/2011 wherein the Tribunal observed in unambiguous term vide para no. 9 at page no. 7 that in this matter there is one High Court judgment in favour of the assessee and another High Court Judgment in favour of the Revenue. This observation of the Tribunal makes it clear that the addition giving rise to the penalty was a debatable issue. However, the Tribunal while following the decision of the Special Bench of the Tribunal in the case of Rain Commodities Ltd. vs. DCIT 131 TTJ 514 (Hyd.) decided the quantum addition issue against the Assessee. However,

in view of the observations of the Tribunal in quantum proceedings, it is clear that the issue relating to which the penalty is levied is a debatable issue in respect of which no penalty could be levied. Therefore, we are of the considered view that it is not a matter of either concealment of income or furnishing of inaccurate particulars of income, but it is only a question of application of law while making disallowance and that ended up in addition and consequent penalty proceedings such as penalty cannot be sustained. With this view of the matter, we quash the penalty proceedings and direct the AO to delete the penalty in dispute.

6. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 27/09/2018.

Sd/-

Sd/-

**[G.D. AGRAWAL]
PRESIDENT**

**[K.NARASIMHA CHARY]
JUDICIAL MEMBER**

Date 27/09/2018

"SRBHATNAGAR"
Copy forwarded to: -

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

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Assistant Registrar,
ITAT, Delhi Benches