

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 2295/Del/2015
Asstt. Year: 2011-12

ITO Ward-23(4), Room No. 246, C.R. Building New Delhi – 110 002	Vs.	Sitashri Trading & Finance Pvt.Ltd. A-6, Connaught Place New Delhi PAN AABCS0182P
(Appellant)		(Respondent)

Department by:	Shri Vijay Kumar Tiwari, Sr.DR
Assessee by :	Shri Sanjiv Jain, CA
Date of Hearing	09/07/2018
Date of pronouncement	01/10/2018

ORDER

PER L.P. SAHU, A.M

This is an appeal filed by the revenue against the order of the Ld. CIT(OSD)(Appeals)-8, Delhi dated 27.2.2015 for the assessment year 2011-12 on the following grounds :-

1."Ld. CIT (A), has erred in law and on facts that the calculation of Tax u/s 115JB made by AO is on the fact that assessee violated section 10(38) in which as per clause (II) clearly bars reduction of income from book profit to which the provision contained in section 10 (38) applies.

2. Ld. CIT(A) has erred in law and on facts that assessee has disclosed its book profit while filing revised computation of income after receiving the notice u/s 143(2) and not added disallowances made u/s 14(A) to its book profit as required under clause (F) of explanation of sec 115JB .

3.The appellant craves to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal".

2 At the outset of hearing the Ld. DR also filed revised grounds of appeal which are as under :-

1."Ld. CIT (a), ahs erred in law and on facts that the calculation of Tax u/s 115JB made by AO is on the fact that assessee violated section 10(38) in which as per clause (II) clearly bars reduction of income from book profit to which the provision contained in section 10 (38) applies.

2.Ld. CIT(A) has erred in law and on facts that assessee has disclosed its book profit while filing revised computation of income after receiving the notice u/s 143(2) and not added disallowances made u/s 14(A) tom its book profit as required under clause (F) of explanation of sec 115JB.

3."The Ld. CIT(A) has erred on facts and in law in cancelling the penalty of Rs. 34,55,511/- imposed ii]» 271(1)(c) of the Act despite the fact that assessee has concealed the particulars of its income u/s 115JB by furnishing inaccurate particulars of book profit calculated u/s 115JB on the below mentioned points:

(a) The addition to book profit was made on the ground that the assessee has not added disallowance made u / s 14A to

its book profit as required under clause (F) of Explanation of section 115JB.

(b) Further assessee reduced the amount from the book profit under clauses (ii) of Explanation 1 of Section 115JB included exempt income on account of profit on sale of long term investment u/s 10(38) while clause (ii) clearly bars reduction of income from the book profit to which the provisions contained in section 10(38) applies".

3. Brief facts of the case are that assessee is an NBFC company who filed its return of income at Rs. 5,00,220/- and paid tax u/s 115JB on the book profit of Rs. 10,98,142/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings Ld. AO observed that the assessee had disallowed expenses of Rs. 57,028/- u/s 14A incurred against exempt income and during the course of assessment proceedings assessee filed revised computation of income wherein it disallowed Rs. 2,36,105/- u/s 14A which was accepted by the Ld. AO. During the course of assessment proceedings Ld. AO observed that the assessee has entered into the business of trading in mutual fund units and has also derived income from interest dividend and income from sale of investments and the business activity was the same as in the previous year. Since the book profit as per the audited balance sheet, profit and loss account of the assessee company was more, therefore, the tax liability was determined by assessee u/s 115JB of the Act and computed book profit u/s 115JB of Rs. 10,98,142/- and paid taxes thereon. During the course of scrutiny proceedings the assessee also filed the revised computation u/s 115JB of the Act and computed the book profit at Rs. 2,02,95,426/- which was accepted by the AO. However, the AO observed that in the original computation of book profit u/s 115JB the assessee had reduced the profit on sale of long

term investment which is exempt u/s 10(38) but clause (ii) of Explanation I of section 115JB clearly bars reduction of income from the book profit to which the provision contained in section 10(38) applies. Since the assessee had not added the disallowance made u/s 14A of Income Tax Act 1961, therefore, Ld. AO imposed the penalty of Rs.34,55,511/- on the aforesaid difference between the book profit u/s 115JB of Income Tax Act 1961. Feeling aggrieved from the order of the Ld. AO the assessee appealed before the Ld. CIT(A) and he made detailed submissions and relied some case laws also. Ld. CIT(A) after considering all the submissions of the assessee and order of the AO allowed the appeal of the assessee.

4. Aggrieved from the order of the Ld. CIT(A) the revenue is in appeal before the ITAT.

5. Ld. DR submitted that the Ld. AO had rightly imposed the penalty on the difference in book profits computed during the course of assessment proceedings. Had it not been taken up for scrutiny the assessee would have escaped therefore the Ld. AO has rightly imposed the penalty u/s 271(1)(c) of the Income Tax Act. Therefore, order of the AO should be restored. He also submitted a written submission which is as under.

In this case, the Department has filed appeal contesting the deletion of penalty u/s 271 (1) (c) of Rs. 3455511/- which was levied. The penalty in these case levied as additions were made on account of adding/inclusion of long term capital gain claim exempt u/s 10(38) amounting to Rs. 1,77,74,907/- and disallowance u/s 14A at Rs. 2,36,105/-.

The CIT (A) held that assessee has filed revised computation of book profit u/s 115JB on receipt of notice u/s 143(2) before any specific query raised by the AO of non-inclusion of such income i.e. L TGB u/s 10(38).

AO has not mentioned this issue in questioner dated 11.12.2013. It was remain unnoticed till notice issued by the AO for the first time to scrutinise the case u/s 143(3).

CIT (A) is not justified in deleting the penalty as had this case was not selected for scrutiny; the assessee would not have ever revised the computation for book profit

u/s 115JB. The assessee was in receipt of large amount of income under the head long term capital gain and it is the company primarily engage in the financial activity. It is quite unbelievable that they are not aware about the taxability of long term capital gain towards book profit u/s 115JB.

The assessee has not revised the return but filed only revised computation. Though, case was selected under scrutiny and notice u/s 143(2) was issue on 24.09.2012 even then it has not revised the return/computation u/s 115JB immediately thereafter. However, when first detail questioner issued on 11.12.2013 the assessee could ascertain/sensed that there is no escapement in respect of such non-disclosure of L TGB. in book profit u/s 115JB only thereafter, he immediately filed the revised computation on 20.12.2013. so this disclosure cannot be taken as voluntarily on the part of assessee.

In this regard, the judgement in the following High Court cases on the issue of section 271 (1)(c) is submitted for your kind consideration:

1. Union of India v. Dharamendra Textile Processors [(2007) 295 ITR 244] (Copy Enclosed)

where Hon'ble Supreme Court held that Penalty under section 271 (1)(c) is a civil liability for which willful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of proceedings under section 276C

2. R L Traders Vs ITO (2017-TIOL-2583-HC-DEL-IT)

where Hon'ble Delhi High Court held that citing of past instance or lack of absence of cross-examination, cannot vitiate the initiation and culmination of penalty proceedings in case of accommodation entry

3. CIT Vs Zoom Communication (p.) Ltd. [191 Taxman 179 (Delhi)/[2010] 327 ITR 510 (Delhi)/[2010] 233 CTR 465]

where Hon'ble Delhi High Court held that If assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona fide, Explanation 1 to section 271 (1)(c) would come into play and assessee will be liable to penalty

4. CIT Vs Moser Baer India Ltd. (184 Taxman 8 (SC)/[2009] 315 ITR 460 (SC)/[2009] 222 CTR 213) (Copy Enclosed)

where Hon'ble Supreme Court confirmed Penalty under section 271 (1)(c) for wrong adjustment of Unabsorbed Depreciation.

5. 'CIT Vs Gold Coin Health Food (P.) Ltd (172 Taxman 386 (SC)/[2008] 304 ITR 308 (SC)/[2008] 218 CTR 359) (Copy Enclosed)

where Hon'ble Delhi Supreme Court held that amendment made in Explanation 4 to section 271(1)(c)(iii) with effect from 1-4-2003 is clarificatory and, therefore, will have retrospective effect. Penalty u/s 271 (1)(c) could be /vied in case of loss return

v. MAK Data P. Ltd vs. CIT [38 taxmann.com 448 (SC)] [2013] 358 ITR 593 (SC) [2013] 263 CTR 1]

Where Hon'ble Supreme Court held that Under Explanation 1 to s. 271 (1)(c), voluntary disclosure of concealed income does not absolve assessee of s. 271 (1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed

“9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.”

7. B.A. Balasubramaniam & Bros. Co Vs CIT [116 Taxman 842, 2361TR 977, 157 CTR 556]

where Hon'ble Supreme Court held that difference between income assessed and income returned being more than 20 per cent, Explanation to section 271 (1)(c) became applicable and assessee having failed to discharge onus being cast on assessee by virtue of said Explanation, Assessing Officer was justified in imposing penalty

8. CIT vs Gates Foam & Rubber Co [91 ITR 467]

CIT vs India Seafood [105 ITR 708]

where Hon'ble Kerala High Court held that Claiming excessive deduction also amounts to concealment of income

9. Steel Ingots Ltd vs. CIT [296 ITR 228]

where Hon'ble Madhya Pradesh High Court held that in case of concealment of true income chargeable to tax by making bogus claim, levy of penalty u/s 271 (1)(c) read with Explanation 1 is justified .

10.CIT Vs Escorts Finance Ltd [183 Taxman 453 (Delhi)/[2010] 328 ITR 44 (Delhi)/[2009] 226 CTR 105]

where Hon'ble Delhi High Court held that if claim made in return of income appears to be ex facie bogus, it would be treated as a case of concealment or furnishing of inaccurate particulars and penalty proceeding would be justified,

11.CIT Vs R.M.P. Plasto (P.) Ltd [184 Taxman 372 (SC)/[2009] 313 ITR 397 (SC)/[2009] 227 CTR 635]

where Hon'ble Supreme Court held that Confirmed penalty upon assessee for concealment of income under section 271(1)(c) because positive income of assessee was reduced to nil after allowing set-off of carried forward losses of earlier years

12. K.P. Madhusudhanan Vs CIT [[2001] 118 Taxman 324 (SC)/[2001] 251 ITR 99 (SC)/[2001] 169 CTR 489 (SC)]

where Hon'ble Supreme Court held that where assessee was unable to furnish evidence for loans and it offered amount of transaction as additional income, Assessing Officer was justified in imposing penalty u/s271 (1)(c) after finding the explanation to be unacceptable and applying Explanation 1 (8) of the section

13.ACIT Vs Smt. J. Mythili ITAT Chennai 35 taxmann.com 86

Where there was a search upon assessee and she subsequent to search, in pursuance of notice issued under section 153A, filed returns for relevant assessment years and amount shown in returns filed as 'other income' was not a part of her regular accounts, such amount would squarely come within purview of concealed income liable to penalty under section 271 (1)(c).

14. Manoj Kumar Singhal Vs CIT 2015-TIOL-588-HC-P&H-IT

If an assessee has clearly declared gifts received from an outsider in the accounts books, the mere fact that the donor was not found at the given address, can be a ground to impose penalty for concealment.

15.Grass Field Farms And Resorts P. Ltd. Vs DCIT [2016] 388 ITR 395 (Raj)

Taking into consideration the material on record and voluminous documents found during the course of survey, the statements and offering of income during the course of survey, could not be said to be voluntary as it was a clear cut admission.

16.Maharaj Garage & Co. Vs CII [2017] 85 taxmann.com 86 (Bombay)

Where opportunity of being heard was already given to assessee under section 274 before imposing penalty under section 271 (1)(c), no further opportunity of being heard was to be given while obtaining previous approval of IAC.

6. On the other hand Ld. AR reiterated the submissions made before the ld. CIT(A) and relied upon his order. It was also submitted that there was no concealment of income. Only it was the mistake in the computation made by the assessee u/s 115JB for computing the book profit. It is not a concealment of income. All the facts were disclosed before the AO during the course of assessment proceedings. Therefore, Ld. CIT(A) is justified to delete the penalty imposed by the AO.

7. After hearing both sides and material available on record and on perusal of the order of authorities below, we observe that Ld. CIT(A) has made good reasoned order and it does not require any interference. The conclusion reached by the Ld. CIT(A) is as under :-

“4. I have considered the assessment order, penalty order, written submission filed by the Ld. AR of the appellant and also perused the documents furnished along with the paper book. After scrutinizing the zerox copy of return it is clear that the appellant has declared dividend, interest income, profit on sale of investment and other income against the Col. No.2 of Part A - P & L A/c. However, while filling the return in Schedule EI, interest income was correctly shown and long term capital gains were also correctly shown. but dividend income which was separately shown against the Col. 2(C) of part A - P & L A/c was not mentioned in the Schedule EI. Ld. AR of the appellant pleaded that there was no malafide intention to calculate the wrong book profit. While filing the Schedule EI, dividend income was omitted. In the Schedule of MAT against col No.3 profit before tax was clearly mentioned. But while showing the deduction against the Col.No.5B, income exempt u/s 10, 10AA, 11 or 12 [exempt income excludes income exempt u/s 10(38)].The figure was wrongly taken. The figure mentioned against this column Rs.2, 16, 18,411/- includes the exempted dividend income of Rs.22,32,719/-. While filling this column, the office has only

taken the exempted income u/s 10, however, the exempted income u/s 10(38) was not excluded. Due to this, the omission occurred at the time of calculation of MAT. It was unnoticed till the notice issued by the Ld. AO for the first time to scrutinize the case u/s 143(3) of the IT Act. When Ld. AO issued first notice dt. 11-12-2013 alongwith questionnaire, appellant noticed that there was a calculation error in the book profit u/s 115JB. Accordingly, the appellant has filed letter dt. 22-12-2013 and re-calculated the book profit and explained this fact to the Ld. AO suo motto. Ld. Assessing Officer has not mentioned this issue in his questionnaire issued on 11-12-2013. On this basis, the Ld. AR of the appellant pleaded that there was no detection by the Ld. AO on this fact. The appellant has noticed mistake and revised the computation and also paid the taxes on 21-01-2014. They further pleaded that appellant had committed an inadvertent and bonafide error and had not intended to attempt to either conceal this income or furnish inaccurate particulars. They have further emphasized that the amount of exempted interest, dividend income and long term capital gains were shown in the respective columns in the return of income. However, while reducing the exempted income which are mentioned u/s 10 they have wrongly mentioned the income exempted u/s 10(38) of the IT Act and pleaded that due to this mistake the book profit was wrongly calculated. They further explained that Ld. Assessing Officer has mentioned this fact in the assessment order regarding the filing of revised computation and payment of taxes. They pleaded, since the wrong calculation of book profit was due to inadvertent mistake, penalty is not leviable. Further they pleaded that there was no concealment of particulars or furnishing of inaccurate particulars. It is correct that under the column MAT, the exempted income shown u/s 10 was wrongly calculated but it was due to mistake because the income exempted u/s 10 excluding the income exempted u/s 10(38) was to be reduced but it appears that clerk has taken the figure of all the income exempted u/s 10 and they have further relied upon the case of Reliance Petroproducts Pvt. Ltd. 322 ITR 158, Price Water Coopers Pvt. Ltd. v. CIT 253 CTR 1 (SC) and CIT v. S.Dhanabal 178 Taxman 242 (Del) and pleaded that the difference in the book profit has been computed on the basis of the facts, information and figures duly

disclosed by the appellant in its return of income as well as audited accounts which we furnished before the Ld. Assessing Officer. Therefore, it cannot be said that the appellant has not disclosed all facts which are material to computation of its income. Further the entire information on the basis of which book profit has been calculated is duly submitted by the appellant in its return of income itself and after inducing the mistake, same was rectified. Since it was a computational error in its return of income and the fact that the various components of the computation of book profit was disclosed in the return of income, imposition of penalty is not justified .

(ii) I agree all these facts and find that the Ld. Assessing Officer has not noticed the error in computing the book profit. When first notice was given by the Ld. Assessing Officer, this fact was not mentioned in the questionnaire. The appellant has suo motto rectified the mistake and also informed the Ld. Assessing Officer and paid the taxes accordingly. The expenditure calculated u/s 14A was also reduced, however, it is a debatable issue because appellant was not claiming any expenditure on exempted income. However, the Ld. Assessing Officer has calculated the expenditure u/s 14A on account of exempted income declared in the return of income. Since it was a mere dispute between the appellant and the assessing officer it cannot be treated as there was a concealment on account of this issue. After considering the case laws cited by the Ld. AR of the appellant, I hold that calculation of book profit was a mere bonafide mistake committed by the appellant while filing the return of income. All the material facts were disclosed in the return of income filed by the appellant by the appellant for calculation of book profit. In view of these facts, I hold that penalty levied by the Ld. AO u/s 271(1)(c) is not justified. Hence it is deleted.”

8. From the above order of the Ld. CIT(A) it is clear that the assessee had produced balance sheet and profit & loss account before the AO during the course of assessment proceedings and the income computed in the profit and loss account has been accepted and during the course of assessment proceeding the assessee filed revised computation which has also been accepted by the Ld. AO. Mere

differences were in computation of book profit is not a concealment of income particularly when the assessee had filed revised computation of book profit showing correct figure thereof, on which the AO has no objection.

9. The main thrust of DR's contention is that it was only when the assessee was cornered by issuing notice u/s. 143(2) dated 11.12.2013 that the assessee filed the revised computation of book profit. In this context, it is significant to note that the AO issued questionnaire which does not contain even a whisper on this issue. Therefore, it can hardly be said that the assessee filed revised computation only when the ambiguity was pointed out by the AO. Secondly, the ld. CIT(A) in the impugned order has given various reasonable possibilities to commit the mistake by the assessee while computing the book profit in the return of income, which stood corrected by the assessee by filing the revised computation of book profit. The revised computation of book profit so filed by assessee stood accepted by the AO. In such view of matter, various decisions relied by the ld. DR are not applicable to the present case having not been based on parallel facts. In presence of these facts, we do not find any infirmity in the impugned order of ld. CIT(A) which is based on plausible reasons and decisions of Hon'ble Supreme Court (supra).

Hon'ble Allahabad High Court in the case of CIT vs. Jindal Polyester & Steel Ltd.,(2014) in ITA No. 73 OF 2001 , 365 ITR 225 (All.) held as under :

"This court, while dealing with the penalty under section 271(1)(c), in A/eo Manali Hydro Power (P) Ltd. (supra) has held as follows (page 527) :

"The Delhi High Court held that in respect of the company in question on the basis of normal provision income was assessed at

negative, i.e., on loss of Rs. 36,95,21,018. The company was MAT company and that the assessment under section 115JB resulted in calculation of profit at Rs. 4,01,63,180. The income of the assessee was thus assessed under section 115JB and not under normal provision. It was held 'no doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under section 115JB which has become the basis of assessment as it was higher of the two. Tax is thus paid on the income assessed under section 115JB. Hence, when the computation was made under section 115JB, the concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all. The upshot of the aforesaid discussion would be to sustain the order of the Tribunal, though on different grounds. Therefore, while the reasoning and approach of the Tribunal is not tenable, for the reasons disclosed above, penalty could not have been imposed even in respect of the false claim of depreciation made by the assessee. Cl T v. Gold Coin Health Food (P) Ltd. [2008] 304 ITR 308 (SC) ; [2008] 218 CTR (SC) 359 ; [2008] 11 DTR (SC) 185 distinguished."

15. On the facts and circumstances we are of the view that the issue involved is squarely covered by Division Bench Decision of this court in the case of Aleo Manali Hydro Power (P) Ltd. (supra).

16. The book profit disclosed by the assessee for the purpose of the liability of tax under section 115J is relevant and not the income determined under the provisions of the Income-tax Act.

17. The Tribunal, on the facts and circumstances of the case, has further recorded the finding that, on the facts and in the circumstances of the case and on the bona fide of the explanation given by the assessee and the disclosure made in the accounts accompanying the return, no penalty is leviable. “

Similarly, ITAT, Chandigarh Bench in Aarge Drugs (P) Ltd. vs. DCIT, (2015) 61 taxmann.com 254 (Chandigarh-Trib.) on the identical issue has held as under :

Penalty under section 271(1)(c) is levied for concealing or furnishing inaccurate particulars of income. Income is understood to mean 'the money that a person earns from work, business etc.' The definition of 'income' under section 2(24), also indicates likewise. MAT, on the other hand, is tax paid on book profits. MAT credit is income tax paid on book profits in earlier years which is allowed to be set off against taxes paid on business income in succeeding years. It is in the nature of taxes paid in advance. Income contemplated under section 271(1)(c), is the income on which taxes are to be computed and paid. This is evident from section 271(1)(c) itself which quantifies the amount of penalty, to the tax sought to be evaded by concealing/furnishing inaccurate particulars of income. Taxes paid or payable are, thus, not income for the purposes of section 271(1)(c). Particulars of MAT credit furnished in the return of income cannot, therefore, be said to be particulars of 'income' for the purpose of levying penalty under section 271(1)(c). [Para 9.3]

Moreover, the act of furnishing inaccurate particulars of income/concealing particulars of income is to be seen in relation to the point of time when the return is filed. In the instant case, as on the date of filing return of income the figure of brought forward MAT credit of assessment years 2008-09 and 2009-10 was as per returned income, which was correct, since no assessment for those years was framed till then. It was only thereafter that the assessments for assessment years 2008-09 and 2009-10 were framed. Therefore, vis-a-vis the return filed no inaccurate particulars were furnished. In any case the only impact of the reduction in the figure of brought forward MAT credit has been a consequential reduction in the figure of MAT credit carried forward. The same has not effected the tax payable by the assessee. [Para 9.4]

The revenue's argument that the assessee ought to have rectified its return is not relevant for the purpose of levy of penalty under section 271(1)(c). The concealment of particulars of income/furnishing inaccurate particulars of income for the purpose of levy of penalty has to be with respect to the return already filed. The Income-tax Act, in any case, does not contain any provision which requires the assessee to rectify its return to account for adjustments made in assessment proceedings. There is, therefore,

no concealment of income or furnishing inaccurate particulars of income in this case because the assessee filed return of income on the basis of MAT disclosed in earlier years' return of income. Therefore, penalty imposed under section 271(1)(c) qua revised MAT credit is to be deleted. [Para 9.5]

In Compucom Software Ltd. vs. DCIT (2017) 82 taxmann.com 256, Jaipur Bench of Tribunal has held as under :

“Held that the assessee has given the full and complete details of the short-term loss accrued to it and also dividend earned by him. The assessee has paid the tax on the book profit and was not assessed under the normal provisions of the Income-tax Act. If the assessee was to be assessed under normal provisions of the Act, there is no tax liability. The Assessing Officer while computing the tax liability has given the calculation under normal provisions of law as well as under Minimum Alternate Tax. From the perusal of order it is crystal clear that the failure on the part of the assessee to give effect to section 94(7) has no bearing on the payment of tax to be paid, therefore no penalty can be imposed on the basis of tax sought to be evaded, as there is no evasion of any tax liability. Therefore, the order passed by the Assessing Officer and the Commissioner (Appeals) on imposition of the penalty was to be set aside.”

9. In view of the above discussion and respectfully following judgment as quoted above we uphold the order of the Ld. CIT(A) and he has rightly deleted the penalty imposed by the AO. Therefore, the appeal of the assessee is dismissed.

Order pronounced in the open court on 01/10/2018

sd/-

(H.S. SIDHU)

JUDICIAL MEMBER

Dated: 01/10/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent

sd/-

(L.P. SAHU)

ACCOUNTANT MEMBER

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi