

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E", NEW DELHI**

**BEFORE SHRI N.K.SAINI, VICE PRESIDENT
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 3358/Del/2016
AY: 2006-07**

DCIT Circle 10(1) Room No. 238A C.R.Building New Delhi	Vs.	GE India Industrial Pvt. Ltd. 4 th Floor, Building 7 A DLF Phase III, DLF Cyber City Sector 25A, Gurgaon PAN: AAACG4901D
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**Cross Objection No.285/Del/2016
(In ITA No. 3358/Del/2016)
(AY: 2006-07)**

GE India Industrial Pvt.Ltd. Gurgaon (Appellant)	Vs.	DCIT, Circle 10(1) New Delhi (Respondent)
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Department by : Sh. Atiq Ahmed, Sr.D.R.
Assessee by : Shri Sachin Jolly, Adv. and
Shri Arush Bhatia, Adv.
Date of Hearing : 23 /10/2018
Date of Pronouncement: 23/10/2018

ORDER

PER BENCH

Present cross appeals have been filed by revenue as well as assessee against order dated 08/03/16 passed by Ld. CIT (A)-16, Delhi for assessment year 2006-07 on following grounds of appeal:

ITA No. 3358/Del/2016

” 1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the penalty of Rs.40,03,864/- imposed by the A.O. u/s 271(1)(c) of the Act on account of disallowance of prior period expenses, loss created due to posting error and expenses claimed on account of provisions made for unascertained liabilities ignoring the fact that the assessee had made claim which is not only incorrect in law but is also without any basis and the claim of the assessee was not bonafides and the final fact finding authority i.e. the Hon’ble ITAT has also confirmed the additions on which the penalty has been imposed by A.O.

2. The appellant craves leave for receiving the right to amend, modify, add or forego any ground of appeal at any time before or during the hearing of appeal.”

Cross Objection 285/Del/16

*“The grounds mentioned herein are without prejudice to one another. These grounds represent the grievances of the Respondent against order dated 08th March 2016 passed by the Learned Commissioner of Income-tax (Appeals) -16, New Delhi (“Ld. CIT(A)”) under section 250(6) of the Income-tax Act,1961 (“Act”) in connection with the order dated 30 July 2014 passed by the Learned Deputy Commissioner of Income-tax, Circle 12(1), New Delhi (“Ld. AO”) under section 271 (1)(c) of the Act (“penalty order”).
Ground No. 1*

That, the Ld. CIT(A) has erred in not adjudicating on the ground that the Ld. AO erred in levying penalty on tax sought to be evaded in respect disallowances/ additions made under computation of income under normal provisions of the Act as well computation of book profits under section 115JB of the Act, when the assessee is liable to pay tax under provisions of section 115JB of the Act.

Ground No. 2

Without prejudice to above, the Ld. CIT(A) has erred in not adjudicating on the ground that the Ld.AO has erred in levying penalty in respect of disallowance of prior period expenses of Rs. 19,99,682 by holding that the said ground has become infructuous.

Ground No. 3

Without prejudice to above, the Ld. CIT(A) has erred in not adjudicating on the ground that the Ld. AO has erred in levying penalty in respect of disallowance of assets written off of Rs. 24,68,840, by holding that the said ground has become infructuous.

The Respondent craves leave to add, amend, vary , omit or substitute, any or all of the above grounds of cross objections, at any time before or during the hearing of the appeal.

The Respondent prays for appropriate relief based on the said grounds of cross objections and the facts and circumstances of the case.”

2. Brief facts of the case are as under:

Assessee filed its return of income on 30/11/06 declaring total income of Rs.33,07,71,939/-. Subsequently the return was revised on 28/03/08 showing total income of Rs.31,85,25,884/-. The revised computation showed set off of unabsorbed business loss and depreciation loss brought forward from the earlier years restricted to the gross total income as mentioned above and hence total income as per the revised computation was shown as 'nil'. The case was selected for scrutiny on 01/10/07 and final assessment order was passed under section 143(3) read with 144C of the Income Tax Act, 1961 (hereinafter referred to as

"the Act"), making various disallowances/adjustments in respect of the transfer pricing issues on 20/10/10. The revised book profit was computed by Ld.AO under section 115 JB of the Act at Rs.48,57,35,537/-. Thereafter vide order dated 27/02/13 passed by Ld.AO under section 154 of the Act, the total income of assessee was reduced to Rs.53,56,53,328/-, as a result of enhanced claim of unabsorbed depreciation available to assessee.

3. Aggrieved by the disallowances/adjustments made in the assessment order, appeal was filed before this Tribunal. This Tribunal vide order dated 08/08/13 granted partial relief to assessee and most of the disallowances/adjustments were restored back to Ld. AO/DRP. Pursuant to the passing of the order by this Tribunal, Ld. AO issued notice under section 271 (1) (c) of the Act on 26/06/14 show causing assessee as to why penalty should not be levied on the following disallowances/additions which were confirmed by this Tribunal:

- disallowance of prior period expenses amounting to Rs.19,99,682/-
- disallowance of assets written off amounting to Rs.24,68,840/-
- adjustment for provision of import duty demand (while computing book profit under section 115 JB) amounting to Rs.29,706,000/-.

Due to rectification order passed by Ld.AO under section 154 dated 27/02/13, penalty that was challenged before the Ld.CIT (A) was in respect of provision for import duty demand amounting

to Rs.2,97,06,000/- in computation of book profit under section 115 JB of the Act.

3.1. Ld.CIT (A) deleted the penalty by following decision of *Hon'ble Delhi High Court* in case of *Shrevani Hospitalities vs. CIT* (ITA No. 804/2011).

4. Aggrieved by the order of Ld.CIT(A) revenue is in appeal before us, in which assessee has also preferred Cross Objection.

5. ITA No. 3358/Del/2016

The only ground raised by revenue is in respect of the penalty being deleted by Ld.CIT (A) on an amount of Rs.2,97,06,000/- in computation of book profit under section 115 JB of the Act.

5.1. At the outset Ld.Counsel submitted that issue stands squarely covered by the decision of *Hon'ble Delhi High Court* in the case of *CIT vs. Nalwa Sons Investments Ltd.*, reported in (2010) 327 ITR 543. He submitted that the decision of *Hon'ble Delhi High Court* has been a matter of challenge before *Hon'ble Supreme Court* by revenue. The SLP filed by revenue stands dismissed by *Hon'ble Supreme Court*, vide order dated 04/05/2012 in Appeal (Civil) No. 1420/18564/2011. Ld.Counsel also submitted that CBDT vide Circular No. 25/2015 dated 31/12/15 has directed revenue not to file any appeals on the issue decided by *Hon'ble Delhi High Court* in the case of *CIT vs. Nalwa Sons Investments Ltd.*, (supra).

5.2. Ld.Sr.DR, though supported the order passed by Ld.AO, could not controvert the aforesaid judicial proceedings relied upon by Ld.Counsel.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us. In our

considered view ratio laid down by *Hon'ble Delhi High Court* in the case of *CIT vs. Nalwa Sons Investments Ltd.*, (supra), is squarely applicable to the present facts of the case. Admittedly in the present case penalty has been levied on an amount which forms part of computation of book profit under section 115 JB of the Act. And therefore concealment of income would have no role to play and would not lead to tax evasion. Respectfully following the decision of *Hon'ble Delhi High Court* in the case of *CIT vs. Nalwa Sons Investments Ltd.*, (supra), which has been approved by Hon'ble Supreme Court based upon which a Circular also has been issued by CBDT, we do not find any case to interfere with.

6.1. Accordingly we dismiss the ground raised by revenue.

7. As the appeal filed by revenue stands dismissed, the Cross Objection filed by assessee becomes infructuous and is dismissed as such.

8. In the result, appeal filed by revenue along with the Cross Objection filed by assessee stands dismissed.

Order pronounced in the Open Court on 23/10/2018.

Sd/-

Sd/-

(N.K.SAINI)
VICE PRESIDENT

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 23rd October, 2018

*Gmv

Copy forwarded to: -

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

- TRUE COPY -

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By Order,

ASSISTANT REGISTRAR

ITAT Delhi Benches

		Date
1.	Draft dictated on	23.10.18
2.	Draft placed before author	23.10.18
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on & Order uploaded on :	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	