

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JM**

**आयकर अपील सं. / ITA Nos.1079 to 1081/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12**

Telediagnosys Services Pvt. Ltd.,
Level 2, Cannought Place,
Bund Garden Road,
Near Wadia College,
Pune - 411 001
PAN : AACCT1503A

.....अपीलार्थी / Appellant

Vs.

ITO, Ward-7(4),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 30.10.2018	घोषणा की तारीख / Date of Pronouncement: 31.10.2018
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आदेश / ORDER

PER R.S.SYAL, VP :

These three appeals by the assessee are directed against the orders passed by the ld. CIT(A) confirming the imposition of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter called as 'the Act') in relation to the assessment years 2009-10 to 2011-12. Since common issue is raised in all these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

ITA No.1079/PUN/2016 - A.Y. 2009-10

2. Brief facts of the case are that the assessee filed return declaring total income at Nil. On examination of the computation of income, it was found by the AO that the assessee declared total income at Nil after

claiming deduction u/s.10B for the equal amount. The AO applied the provisions of section 115JB of the Act and held the assessee to be chargeable to tax on the total income computed on the touchstone of such provision. That is how, the total income of Rs.19,83,846/- was computed. Thereafter, penalty was imposed on the ground that the assessee did not declare income u/s.115JB of the Act. The Ld. CIT(A) echoed the view canvassed by the AO in levying the penalty under this provision. The assessee is aggrieved by the confirmation of such penalty.

3. Having heard both the sides and perused the relevant material on record, it is noticed that the assessee computed Nil income under regular provisions of the Act by showing the income before the deduction u/s.10B at Rs.20,28,471/- and thereafter claiming deduction under this provision for the equal amount. The AO has not disputed the correctness of the total income before or the otherwise eligibility of the assessee to deduction u/s.10B on such amount. The only basis for imposition of penalty is the computation of income u/s.115JB of the Act *de hors* the computation of income under the regular provisions of the Act. In our considered opinion, this cannot be a case for imposition of penalty.

4. It is seen that the assessee did not offer income u/s.115JB of the Act in the backdrop of the fact that its 100% income was eligible for deduction u/s 10B and on such basis the applicability of the provisions of section 115JB did not result into computation of any positive 'book profit' as per the provisions of clauses (f) and (ii) of Explanation 1 to section 115JB as existing before amendment by the Finance Act, 2007

w.e.f. 01-04-2008. In such pre-amendment era, the amount of expenses and revenue relatable to the income covered u/s. 10B etc. were liable to be added or subtracted from the amount of net profits for computing 'book profit' u/s.115JB of the Act, thereby not producing any positive 'book profit' under this provision despite there being excess of revenue over expenditure in the eligible unit. It was on the omission, *inter alia*, of the words 'section 10B' in the above two clauses of the Explanation 1 to section 115JB of the Act that the positive 'book profit' came to be computed despite 100% deduction u/s 10B of the Act in case of excess of revenue over expenses in the eligible unit. The assessee, as in the past, was under *bona fide* presumption that the pre-amendment position was prevalent and even the auditor did not point out the effect of amendment in the audit report given under the provisions of sub-section (4) of section 115JB. This shows that the auditor, who was supposed to compute the correct amount of 'book profit' in accordance with Explanation 1 to section 115JB(2) was oblivious to the amendment and did not report the correct amount of 'book-profit'. As and when the correct position was confronted by the AO, the assessee accepted the position without challenging it before the first appellate authority.

5. It is further relevant to note that the assessee declared all the relevant particulars of its income and never intended to conceal or furnish inaccurate particulars of its income. It was on the basis of such facts declared by the assessee that the AO came to know about the applicability of section 115JB of the Act and the computation of positive 'book-profit' chargeable to tax. The Hon'ble Supreme Court in *CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)* has held that

when the assessee furnishes all the relevant details in the return of income, which are not found to be inaccurate, any addition made thereafter cannot be viewed as concealment of income and as such, no penalty can be imposed u/s. 271(1)(c) of the Act. The Mumbai Bench of the Tribunal in *ACIT Vs. Rahat Industries Ltd. (ITA No.2543/Mum/2011)* vide its order dated 10-02-2012 has deleted the penalty imposed by the AO u/s. 271(1)(c) of the Act when the assessee declared Nil income after claiming deduction u/s.80IC but the AO computed positive income u/s.115JB of the Act. Similar view has been taken by another Bench of the Mumbai Tribunal in *ACIT Vs. Trends Holdings & Consultancy Pvt. Ltd. (ITA No.7379/Mum/2013)* vide its order dated 28-02-2017. Copies of such orders of Tribunal have been placed on record.

6. In view of the foregoing discussion and respectfully following the precedents, we are of the considered opinion that the penalty was wrongly levied and confirmed. We, therefore, overturn the impugned order and order for deletion of penalty.

7. In the result, the appeal is allowed.

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8. Both the sides are in agreement that the facts and circumstances of these appeals are *mutatis mutandis* similar to those of the appeal for the A.Y. 2009-10. In fact, both the sides adopted the arguments made by them in appeal for the A.Y. 2009-10 and no separate submission was put forth. Following the view taken herein above, we set-aside the impugned orders and order to delete the penalty.

9. In the result, the appeals are allowed.

Order pronounced in the Open Court on 31st October, 2018.

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 31st October, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT (Appeals)-5, Pune.
4. आयकर आयुक्त / The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune*