

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'C', NEW DELHI**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 4410/Del/2014

AY: 2003-04

Hari MotoCorp Ltd. 34, Community Centre, Basant Lok, Vasant Vihar, New Delhi. AAACH0812J	vs.	ACIT Circle 12(1) New Delhi.
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(Appellant)

(Respondent)

&

ITA No. 2770/Del/2015

AY: 2006-07

DCIT Circle 11(1) New Delhi.	vs.	Hero Motocorp Ltd. 34, Basant Lok, Vasant Vihar, New Delhi. AAACH0812J
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(Appellant)

(Respondent)

Assessee by : Sh. Gaurav Jain, Adv.

Revenue by : Sh. Kumar Hrishikesh, CIT DR

Date of Hearing : 04/12/2018

Date of Pronouncement: 19/12/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeals have been filed by assessee against order dated 30/06/2014 and 06/02/15 passed by Ld.CIT (A)-15, New Delhi for assessment year 2003-04 on following grounds of appeal:

Grounds of ITA No. 4410/del/2014 AY 2003-04:

1. *“That the CIT(A) erred on facts and in law in upholding the action of AO in levying penalty u/s 271(1)(c) on disallowance of deduction u/s 80IA made in the assessment order passed u/s 143(3) of the Income Tax Act, 1961 for alleged furnishing of inaccurate particulars of income.*
2. *That on the facts and circumstances of the case, the CIT(A) erred on facts and in law in not holding that the penalty order dated 21.03.2012 passed by the AO u/s 271(1)(c) of the Act was beyond jurisdiction, bad in law and void ab initio, since no satisfaction qua concealment/furnishing of inaccurate particulars of income in respect of disallowance made u/s 80IA was recorded in the assessment order, which was sine qua non for assumption of jurisdiction for levying penalty u/s 271(1)(c).*
3. *That the CIT(A) erred on facts and in law in holding that appellant furnished inaccurate particulars of income by notionally booking profit after taking tariff rate of Rs. 5,92,per unit arbitrarily as against the prevailing market tariff of power charged by HSEB.*
- 3.1 *That the CIT(A) erred on facts and in law in not appreciating that no incorrect facts relating to the claim of deduction were disclosed by the appellant and disallowance was made simply on the basis of bona fide difference of opinion.*

The appellant craves leave to add, to alter, amend or vary from the above grounds of appeal before or at the time of hearing.”

Grounds of ITA No. 2770/del/2015 AY 2006-07

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) right in ignoring the fact that the Hon’ble ITAT has already confirmed the disallowance of deduction u/s 80IA.*

2. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

2. Brief facts of the case are as under:

Assessee is a company engaged in manufacturing and sale of motorcycles. In order passed by Ld.AO under section 143 (3) of the Act, several additions were made to total income. On disallowance of deduction under section 80-IA and section 80HHC of the Act, additions were upheld by Ld.CIT (A). Ld.AO accordingly, issued notice under section 274 of the Act, for levy of penalty under section 271(1)(c) of the Act.

3. Aggrieved by penalty order passed by Ld.AO, assessee preferred appeal before Ld.CIT(A), who upheld penalty on account of disallowance under section 80-IA.

4. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

5. Ld. Counsel submitted that *Hon’ble Delhi High Court in ITA No. 45/2014 and ITA No. 342/2014 vide order dated 28/017/15 and 19/11/15 respectively, admitted question of law in respect of addition, on which penalty has been confirmed by Ld.CIT(A). The question of law as framed by Hon’ble High Court is as under:*

1. *“whether the income tax appellate tribunal was right in disallowing the claim under section 80 IA of the Income Tax Act, 1961 for violation of subsection (8).*

2.”

6. The above referred orders passed by Hon'ble High Court admitting the question of law is placed at pages 154-157 of paper book.

7. Ld. Counsel placed reliance on *order dated 05/10/10* passed by *Hon'ble Delhi High Court* in case of *CIT vs Liquid Investment and Trading Co.*, in *ITA No. 240/2009*, and submitted that, admission of issue on which penalty has been levied would make it apparent that, such addition made is debatable.

8. On contrary, Ld. DR place reliance on orders of authorities below.

9. We have perused submissions advanced by both sides in light of records placed before us.

9.1 It is a case where penalty is levied, on a issue, in respect of which *Hon'ble Delhi High Court* in assessee's own case for relevant assessment year under consideration, has framed substantial question of law. It thus becomes apparent that addition is debatable.

10. We draw support in respect of afore stated view from *order dated 05/10/10* passed by *Hon'ble Delhi High Court* in case of *CIT vs Liquid Investment and Trading Co.*, (supra).

We are, therefore, inclined to delete the penalty.

Accordingly grounds raised by assessee stands allowed.

In the result appeal filed by the assessee stands allowed.

Order pronounced in the open court on 19/12/2018

Sd/-
(N.K. SAINI)
VICE PRESIDENT
Dt. 19/12/2018

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

*Kavita Arora

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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Date of dispatch of Order.	