

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 1290/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>M/s. Yash Dairy Spices &amp; Food Pvt. Ltd.</b> 9/10, 3 <sup>rd</sup> Floor, Shyam Shikhar Complex, Bapunagar Tallnaka, Ahmedabad 380024	<b>बनाम/</b> Vs.	<b>The ITO</b> Ward – 4(1)(4), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY2221L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul K. Patel, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Sumeet Kumar Verma, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	24/01/2019
घोषणा की तारीख /Date of Pronouncement	29/01/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-8, Ahmedabad ('CIT(A)' in short), dated 12.04.2017 arising in the penalty order dated 24.07.2015 passed by the Assessing Officer (AO) under S. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The solitary issue involved in the present appeal is towards imposition of penalty of Rs.1,54,916/- under s.271(1)(c) of the Act.

3. When the matter was called for hearing, the learned AR for the assessee referred to the assessment order at the outset and submitted that the penalty has been imposed on account of addition of certain short term capital gains amounting to Rs.9,73,492/-. However, the assessment has been ultimately carried out under the special provisions of Section 115JB of the Act where the book profit was found to be substantially higher at Rs.29,75,210/-. The learned AR for the assessee thus submitted that where the tax payable as per the MAT provision exceeds qua tax liability under normal provisions, no concealment can be envisaged under S. 271(1)(c) of the Act. For this proposition, the learned AR relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Nalwa Sons Investments Ltd. [2010] 327 ITR 543 (Del.). The learned AR next submitted that Explanation (4) to Section 271(1)(c) has been modified by Finance Act, 2015 and is applicable from AY 2016-17 onwards to impose penalty on such a situation which is prospective in nature. The learned AR thus contended that penalty imposed by the AO and confirmed by the CIT(A) is without authority of law and thus requires to be deleted.

4. The learned DR, on the other hand, relied upon the orders of the Revenue authorities.

5. We have carefully considered the rival submissions. The short controversy in issue is whether under S.271(1)(c) of the Act can be imposed on the alleged concealment of income by the assessee quantified with reference to the amount of tax sought to be evaded as per the normal provisions of the Act where the tax liability has

ultimately arisen on the assessee at 'deemed income' as per the special provisions of Section 115JB of the Act. A reference to the decision of the Hon'ble Delhi High Court in the case of Nalwa Sons Investments Ltd. (supra) has been made on behalf of the assessee which squarely covers the issue in favour of the assessee. The subsequent amendment to the Explanation (4) of Section 271(1)(c) also suggests the purport of the existing provisions as applicable in the relevant assessment year. Therefore, we find merit with the appeal of the assessee. The AO is accordingly directed to delete the penalty imposed under normal provision when the tax liability has been fastened on the assessee under the special provisions of Section 115JB of the Act.

6. In the result, appeal of the Assessee is allowed.

**This Order pronounced in Open Court on 29/01/2019**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 29/01/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।