

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.-3728/Del/2017
(Assessment Year: 2008-09)**

Tefal India Household Appliances Pvt. Ltd. A-25, 1 st Floor, Rear Tower, Mohan Cooperative Industrial Estate, Mathura Road New Delhi PAN : AA ACT2568D	vs	ITO Ward-16(2) New Delhi
Assessee by		Shri Pradip Dinodia, CA, Sh. R.K. Kapoor, CA
Revenue by		Shri Shailesh Kumar, Sr. DR

Date of Hearing	12.12.2018
Date of Pronouncement	17.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-9, New Delhi dated 06.03.2017 for assessment year 2008-09.

2. The sole issue involved in this appeal is that the Commissioner of Income Tax (Appeals) erred in confirming the levy of penalty of Rs. 27,65,750/- u/s 271(1)(c) of the Act.

3. The facts of the case are that in an assessment made u/s 143(3) of the Act the Assessing Officer made an addition to the income of the assessee of Rs. 83,34,206/- by disallowing the entire expenses claimed by the assessee on the ground that the assessee had no business activity during the year under consideration and determined the income of the assessee at Rs. 89,50,620/- against business income of Rs. 6,16,410/- shown by the assessee. In this way, he computed the income of the assessee at a figure of Rs. 89,50,620/-.

4. Thereafter, the Assessing Officer levied penalty u/s 271(1)(c) of the Act on Rs. 89,50,620/- for concealment of income by the assessee at Rs. 27,65,750/-.

5. The assessee appealed against the said order of the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) observed that in the quantum appeal filed by the assessed, the Commissioner of Income Tax (Appeals) has deleted the addition of Rs. 1,12,360/- on account of audit fee claimed as an expenditure by the assessee and confirmed the balance addition of Rs. 82,21,846/-. He, therefore, directed the Assessing Officer to levy penalty on Rs. 82,21,846/- u/s 271(1)(c) of the Act.

6. Being still aggrieved by the said order of the Commissioner of Income Tax (Appeals), the assessee is now in appeal before us. The AR of the assessee submitted that the assessee had no business activity during the year. The

assessee had earned interest income of Rs. 6,16,410/- which was shown by the assessee as business income in the return of income filed and was assessed by the Assessing Officer under the head "business income". Against this business income, the assessee had claimed expenses of Rs. 83,34,206/- and arrived at loss of Rs. 77,17,798/- which was shown in the return of income. As the expenditure claimed by the assessee was not found by the Assessing Officer as not genuine or inflated the levy of penalty was not justified. He relied on the decision of Hon'ble Supreme Court in the case of **CIT vs. Reliance Petroproducts Pvt. Ltd. [322 ITR 158]** wherein it was held that mere making of incorrect claim in the return of income does not amount to concealment of income. He further submitted even otherwise the sum of Rs. 81,71,490/- out of the addition of Rs. 82,21,846/- pertained to exchange fluctuation loss on external commercial borrowings in which was an allowable expenditure in view of decision of Hon'ble Supreme Court in the case of **CIT vs. WOODWARD GOVERNOR INDIA PVT. LTD. 312 ITR 254 (SC)** wherein it was held loss suffered by the assessee on account of fluctuation in the rate of foreign exchange as on the date of the balance sheet is an item of expenditure u/s 37(1) of the Income Tax Act, 1961. Hence the assessee was not exigible to penalty under section 271(1)(c) of the Act.

7. On the other hand, the Ld. Departmental Representative, Shri Shailesh Kumar, Sr. DR fully justified the orders of the lower authorities.

8. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case the assessee disclosed the loss of Rs. 77,17,798/- after setting off of total expenditure of Rs. 83,34,206/- against business income of Rs. 6,16,410/-. On assessment the Assessing Officer disallowed entire expenditure of Rs. 83,34,206/- and determined assessee's income at Rs. 89,50,620/- on the ground that no business was carried out by the assessee during the year under consideration and therefore business expenses cannot be allowed as deduction.

9. In the quantum appeal before the Commissioner of Income Tax (Appeals), he allowed deduction for audit fee of Rs. 1,12,360/- and confirmed the balance disallowance of Rs. 82,21,846/-. No further appeal was filed against the said order.

10. In the meanwhile the Assessing Officer passed an order u/s 271(1)(c) of the Act. In this order the Assessing Officer has held that he was satisfied that the assessee has concealed particulars of his income of Rs. 89,50,620/- and consequently he imposed penalty of Rs. 27,65,750/-.

11. On appeal, The Commissioner of Income Tax (Appeals) finding that in quantum appeal relief of Rs. 1,12,360/- was allowed, he deleted that the penalty levied in respect of Rs. 1,12,360/- and confirmed the levy of penalty on the balance

amount as he was of the view that the assessee has furnished inaccurate particulars of income in respect of the balance amount.

12. We find that it is not in dispute that the Assessing Officer has not levied any penalty on the ground of furnishing of any inaccurate particulars of income by the assessee. The charge which was framed against the assessee by the Assessing Officer was the guilt of concealment of particulars of income and no charge was framed for furnishing any inaccurate particulars of income.

13. Further, we find that the CIT(A) before holding the assessee guilty of furnishing of inaccurate particulars of income has not issued any show cause notice to the assessee and has not allowed any opportunity of hearing to the assessee in respect of that charge. In the circumstances, the order of the Commissioner of Income Tax is bad in law and unsustainable.

14. Moreover, we find that no particulars of income which was concealed by the assessee could be pointed out by the revenue. Therefore, we delete the penalty levied u/s 271(1)(c) against the assessee and allow the grounds of appeal of the assessee.

15. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 17th December, 2018 at
New Delhi.**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 17.12.2018

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	12.12.2018
Date on which the typed draft is placed before the dictating Member	13.12.2018
Date on which the typed draft is placed before the Other Member	14.12.2018
Date on which the approved draft comes to the Sr. PS/PS	17.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	17.12.2018
Date on which the fair order comes back to the Sr. PS/PS	17.12.2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

