

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2104/Del/2015
Assessment year: 2009-10**

Shri Sunil Prakash, House No. 901, Sector-17, Faridabad, Haryana. (PAN: AFVPP5777K)	vs	ACIT, Circle-II, Faridabad.
Appellant		Respondent

**Assessee by : Shri Rakesh Gupta, Adv.
Department by: Shri Surender Pal, Sr. DR**

**Date of hearing : 20.11.2018
Date of pronouncement : 30.01.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

This appeal is preferred by the assessee against the order dated 2.5.2014 passed by the Ld. CIT (Appeals), Faridabad for assessment year 2009-10 wherein vide the impugned order, the Ld. CIT (Appeals) has confirmed the imposition of penalty for Rs. 23,11,130/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2.0 Brief facts of the case are that the assessee is running various units in Faridabad, Jammu, Kashipur and Badarpur and

is enjoying exemption u/s 80IB/80IC of the Act. The assessee is mainly in the business of manufacturing of sheet metal components, engineering parts and diesel generator sets etc. The return of income was filed declaring income of Rs. 2,89,97,320/- and this was after claiming deduction u/s 80IB of the Act to the tune of Rs. 20,88,47,617/- and u/s 80IC of the Act to the tune of Rs. 12,61,26,152/- in respect of units at Jammu and Kashipur respectively. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act at an income of Rs. 36,79,71,080/- by disallowing deduction claimed u/s 80IB/80IC and also after making addition of Rs. 68,66,109/- on account of expenses of non-exempted unit allocated to exempt units.

2.1 Aggrieved, the assessee approached the Ld. CIT (Appeals) against the addition of Rs. 68,66,109/- on account of expenses of non-exempt units having been allocated to exempt units but the assessee's appeal was dismissed by the Ld. CIT (Appeals). Subsequently, the Assessing Officer imposed penalty of Rs. 23,11,130/- being 100% of the tax sought to be evaded on this amount and assessee's appeal against the penalty also was dismissed by the Ld. CIT (Appeals). Now, the assessee is before

the ITAT and is challenging the confirmation of the penalty imposed u/s 271(1)(c) of the Act.

3.0 The Ld. AR submitted that the assessee is having several units in Faridabad and Delhi and also in tax exempt areas like Jammu and Kashipur. It was submitted that the units in Jammu and Kashipur were eligible for deduction u/s 80IC of the Act. However, an addition of Rs. 68,66,109/- was made on the ground that expenses on account of advertisement, repair and maintenance and other expenses related to all the units being run by the assessee whereas these expenses had been debited only to the non-exempt units. It was submitted that the Assessing Officer proceeded to apportion such expenses to the tax exempt unit at Jammu and at Kashipur to the tune of Rs. 39,75,116/- and Rs. 28,90,993/- respectively and, therefore, the tax exemption of Jammu and Kashipur units were reduced by the said amounts whereas the profits of the non-exempt income got a corresponding increase. It was submitted that penalty was imposed on this addition for furnishing inaccurate particulars of income. It was submitted that this addition would not give way to the charge of filing of inaccurate particulars of income because it is not the department's case that these expenses were not

incurred. It was further submitted that there is not even a whisper in the assessment order that these expenses were not incurred for the purposes of business. It is also not the case of the Assessing Officer that the relevant details were not furnished and it was emphasised that complete books of accounts were produced before the Assessing Officer. It was submitted that the apportionment had been made on the basis of sale but the very concept of apportionment is based on estimate and there can be a difference of opinion on the methodology of apportionment. It was submitted that apportionment by estimate cannot justify the charge of furnishing of inaccurate particulars of income. It was also submitted that the penalty has been imposed without giving a finding or bringing on record any evidence which would establish the department's allegation that there was a deliberate and wilful intention to evade payment of tax. It was prayed that the penalty imposed may be deleted.

4.0 In response, the Ld. Sr. DR submitted that it was a factual finding recorded by the Assessing Officer that the assessee had debited some expenditure pertaining to all the units only to the non-tax exempt units. It was also submitted that it is also a fact of the matter that the assessee's appeal against the quantum

addition was dismissed by the ITAT Delhi and, therefore, it was beyond doubt that the assessee had furnished inaccurate particulars of income by allocating expenses of tax exempt unit to non-tax exempt unit and, therefore, it was a clear case of furnishing inaccurate particulars of income.

5.0 We have heard the rival submissions and perused the material available on record. It is seen that the assessee's case is covered by the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs. Mirc Electronics Ltd. wherein the Hon'ble High Court had placed reliance on its earlier judgment in the case of Zandu Pharmaceuticals vs. Commissioner of Income Tax reported in 350 ITR 366 (Bombay) and had arrived at a conclusion that the opinion of the respondent/assessee in not allocating any personal expenses of the head office to the eligible units is a possible view and therefore it could not be said that there was any filing of inaccurate particulars and/or concealment of income on the part of the respondent/assessee warranting imposition of penalty. The Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Virgo Marketing (P) Ltd. (2008) 172 Taxman 83 held that if the Assessing Officer took a view contrary to that

expressed by the assessee, it did not *per se* mean that the assessee had adopted an illegal device for reducing its tax liability. It is undisputed that there are no norms prescribed under the Income Tax Act for allocation of common expenses incurred by the assessee and the same has to be apportioned to various manufacturing units on the basis of an estimate only. It is not the department's case that relevant facts were not disclosed in the income tax return or the financial statement of the assessee. It is undisputed that the assessee had furnished all the details of expenditure as well as income and no such details were found to be inaccurate nor could it be viewed as concealment of income on the part of the assessee. Therefore, at the most, it was a case of the assessee making an incorrect claim in law which cannot tantamount to furnishing of inaccurate particulars of income. The Hon'ble Apex Court has held in Commissioner of Income Tax vs. Reliance Petroproducts that merely because the assessee had claimed a deduction which was not acceptable to the revenue, the same by itself would not attract the penalty u/s 271(1)(c) of the Income Tax Act. Accordingly, we are of the considered opinion that this was not a fit case for imposition of penalty u/s 271(1)(c) of the Act and we

set aside the order of the Ld. Commissioner of Income Tax(A) on the issue of levy of penalty on apportionment of expenses of non-exempted units allocated to exempted units and direct the Assessing Officer to delete the penalty so imposed.

6.0 In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 30th JANUARY, 2019.

Sd/-

**(R.K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 30th JANUARY, 2018
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

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By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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	