

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

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5151/Del/2016

AY: 2006-07

&

ITA No. 5152/Del/2016

AY: 2007-08

Jindal Stainless Ltd. O.P. Jindal Marg Hisar PAN: AABCJ1969M	vs.	DCIT, Circle 13(2) New Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. Neeraj Jain, Adv.
Sh. Abhishek Agarwal, C.A.

Department by : Ms. Naina Soin Kapil, Sr.D.R.

Date of Hearing : 31/01/2019

Date of Pronouncement: 06/02/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeals have been filed by assessee against order dated 28/07/16 and 29/07/16 passed by Ld. CIT (A)-37 for Assessment Years 2006-07 and 2007-08 respectively on following grounds of appeal:

ITA 5151/Del/16 AY 2006-07

1. That on the facts and circumstances of the case and in law, the order passed by the CIT(A) levying penalty under section 271(1)(c) of the Income-tax Act ('the Act') is beyond jurisdiction, bad in law and void ab-initio.
2. That Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on the facts and in law in upholding the action of the assessing officer in levying penalty of Rs. 10,21,255 under section 271(1)(c) of the Act in respect of (i) transfer pricing adjustment of Rs. 28,89,032 on the transaction of export of stainless steel coil and (ii) Rs. 1,45,001 with respect to disallowance of donation expense, made in the assessment order passed under section 143(3) read with section 92CA(3) of Act.
3. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the penalty proceedings were initiated without recording proper satisfaction in the assessment order passed under section 143(3) of the Act and levy of penalty, therefore, was unlawful and is liable to be dropped.
4. That the CIT(A) erred on facts and in law in not appreciating that there was no concealment or furnishing of inaccurate particulars of income with respect to (i) transfer pricing adjustment of Rs. 28,89,032 on the transaction of export of stainless steel coil and (ii) Rs. 1,45,001 with respect to disallowance of donation expense made in the assessment order and therefore, there was no warrant to impose penalty under section 271(1)(c) of the Act.
5. That the CIT(A) erred on facts and in law in not appreciating that penalty proceedings are independent from assessment proceedings and therefore, only because an addition have been sustained in appeal against the appellant, penalty under section 271(1)(c) is not automatically leviable.
6. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the explanation tendered by the appellant was not bonafide and tenable in law and also the appellant did not discharge onus / burden of proof cast on him till date.
7. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the appellant failed to establish existence of due diligence good faith and, therefore, too, penalty under section 271(1)(c) of the Act was leviable.

8. That the CIT(A) erred on facts and in law in holding that the explanation of the appellant on account export of steel products aggregating to Rs. 28,89,032 was found to be incorrect and, thus, the same tantamount to concealment of income, warranting imposition of penalty under section 271(1)(c) of the Act.

9. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that the international transaction of export of stainless steel coils was duly reported as international transaction in the Transfer Pricing study and 3CEB certificate and all information and documents in relation thereto were placed on record and merely for the reason that the transfer pricing adjustment has been made on this account, it cannot be alleged that the appellant furnished inaccurate particulars of income, so as to levy penalty under section 271(1)(c) of the Act.

10. That the CIT(A) erred on facts and in law in holding that the explanation of the appellant on account unsubstantiated claim of donation amounting to Rs. 1,45,001 was found to be incorrect and, thus, the same tantamount to concealment of income, warranting imposition of penalty under section 271(1)(c) of the Act.

The appellant craves leave to add, amend, alter and vary the above grounds of appeal on or before the date of hearing."

ITA No.5152/Del/2016

1. That on the facts and circumstances of the case and in law, the order passed by the CIT(A) levying penalty under section 271(1)(c) of the Income-tax Act ('the Act') is beyond jurisdiction, bad in law and void ab-initio.

2. That Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on the facts and in law in upholding the action of the assessing officer in levying penalty of Rs. 2,47,83,673/- under section 271(1)(c) of the Act in respect of transfer pricing adjustment of Rs. 2,47,83,673/- on the transaction of export of stainless steel coils made in the assessment order passed under section 143(3) read with section 92CA(3) of Act.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the penalty proceedings were initiated without recording proper satisfaction in the assessment order passed under section 143(3) of the Act and levy of penalty, therefore, was unlawful and is liable to be dropped.

4. That the CIT(A) erred on facts and in law in not appreciating that penalty was arbitrarily levied @ 100% of income allegedly sought to be evaded, i.e. Rs.2,47,83,673/- which is not mandated under the provisions of section 271(1)(c) of the Act and, therefore, levy of penalty itself was bad in law and was liable to be dropped.

5. That the CIT(A) erred on facts and in law in not appreciating that there was no concealment or furnishing of inaccurate particulars of income with respect to transfer pricing adjustment of Rs. 2,47,83,673/- on the transaction of export of stainless steel coils made in the assessment order and therefore, there was no warrant to impose penalty under section 271(1)(c) of the Act.

6. That the CIT(A) erred on facts and in law in not appreciating that penalty proceedings are independent from assessment proceedings and therefore, only because an addition have been sustained in appeal against the appellant, penalty under section 271(1)(c) is not automatically leviable.

7. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the explanation tendered by the appellant was not bonafide and tenable in law and also the appellant did not discharge onus / burden of proof cast on him till date.

8. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the appellant failed to establish existence of due diligence good faith and, therefore, too, penalty under section 271(1)(c) of the Act was leviable.

9. That the CIT(A) erred on facts and in law in holding that the explanation of the appellant on account export of steel products aggregating to Rs. 2,47,83,673/- was found to be incorrect and, thus, the same tantamount to concealment of income, warranting imposition of penalty under section 271(1)(c) of the Act.

10. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that the international transaction of export of stainless steel coils was duly reported as international transaction in the Transfer Pricing study and 3CEB certificate and all information and documents in relation thereto were placed on record and merely for the reason that the transfer pricing adjustment has been made on this account, it cannot be alleged that the appellant furnished inaccurate particulars of income, so as to levy penalty under section 271(1)(c) of the Act.

The appellant craves leave to add, amend, alter and vary the above grounds of appeal on or before the date of hearing."

2. Brief facts of the case are as under:

Assessee filed its return of income on 23/11/06 for Assessment Year 2006-07 declaring total income of Rs.83,00,83, 200/-and for Assessment Year 2007-08 the return of income was filed on 31/01/11 on total income of Rs.261,06,90,840/-. Assessment under section 143 (3) read with 144C was passed by Ld.AO after making TP adjustments, disallowance under section 14 A, interest de-capitalisation, bad debts disallowance, which were common for both years under consideration. Additionally, for assessment year 2006-07, Ld.AO disallowed deduction claimed under section 80 IA and section 80 G and for Assessment Year 2007-08, disallowance on computer peripherals were made.

3. Aggrieved by additions made, assessee preferred appeal before Ld.CIT(A), who confirmed addition made by Ld.AO, on transfer pricing adjustment for both years under consideration and disallowance of donation under section 80 G for Assessment Year 2006-07.

4. In the meanwhile penalty proceedings were initiated by Ld.AO and penalty was levied at 100% of income sought to be evaded for both years under consideration.

5. Aggrieved by penalty levied, assessee preferred appeal before Ld.CIT (A) who confirmed penalty.

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

7. **Ground No. 1, 3, 5, 6 and 7** are general in nature and therefore do not require any adjudication.

8. **Ground No. 2 (i), 4 (i), 8 and 9** are in respect of penalty levied on transfer pricing adjustment.

8.1. It has been submitted that transfer pricing adjustment is due to difference in arm's length price of international transaction of export of stainless steel coils, difference in interest rate on loan charged from associated enterprises, adjustment on account of corporate guarantee given to AE.

8.2. Ld.Counsel at outset submitted that, in quantum proceedings for both years under consideration, this Tribunal set aside addition made on account of transfer pricing adjustment back to Ld.TPO for readjudication, in light of submissions/details filed by assessee.

8.3. Ld.Counsel placed before us orders passed by this Tribunal in quantum proceedings for assessment year 2006-07 and 2007-08 which has been perused by us.

9. We are therefore inclined to set aside penalty proceedings back to Ld.AO by keeping all contentions open for assessee. The Ld.CIT DR do not object penalty proceedings being set aside back to Ld. AO for reconsideration.

9.1. Accordingly **Ground No. 2 (i), 4 (i), 8 and 9** raised by assessee for both years under consideration are allowed for statistical purposes.

10. **Ground No. 2 (ii), 4 (ii) and 10** are in respect of sustained claim of donation amounting to Rs.1,45,001/-. It is observed that before Tribunal this issue was never agitated by assessee in quantum proceedings and in order passed by Ld.CIT (A) placed at page 23-70 of paper book for assessment year 2006-07

assessee had not pressed this ground accordingly it was dismissed.

11. Before us Ld.Counsel did not advance any submissions regarding penalty levied on disallowance of donation.

11.1. Accordingly the ground is dismissed.

12. In the result appeal filed by assessee for assessment year 2006-07 is partly allowed for statistical purposes and appeal for assessment year 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on 06th February, 2019.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 06th February, 2019

- Gmv
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Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	04.02.2019
Draft placed before author	04.02.2019
Draft proposed & placed before the second member	05.02.2019
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	06.02.19
Kept for pronouncement on & Order uploaded on :	06.02.19
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	