

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND SHRI R.K. PANDA, ACCOUNTANT MEMBER
ITA No.-6090/Del/2015
(Assessment Year: 2008-09)**

M/s. Globe Capital Market Ltd. 609, Ansal Bhawan, 16, K.G. Marg, Connaught Place, New Delhi – 110 001 PAN AAACG4267G	vs	DCIT Circle-10(1), C.R. Building, I.P. Estate New Delhi – 110 002
Assessee by	Shri Ved Jain, Advocate Shri Ashish Goel, CA	
Revenue by	Ms. Rinki Singh, Sr. (DR)	

Date of Hearing	03.01.2019
Date of Pronouncement	11.02.2019

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 08/09/2015 of CIT(A)-IV, New Delhi pertaining to Assessment Year 2008-09 on the following ground:

“That on the facts and circumstances of the case, the order passed by the A.O. and confirmed by the Ld.CIT(A) u/s 271(1)(c) of the Income Tax Act, 1961 is bad, both in the eye of law and on facts. The penalty of Rs.2,16,516/- levied u/s 271(1)(c) of the I.T. Act is, therefore, uncalled for and deserves to be deleted.”

2. The Ld. A.R. filing a copy of the notice dated 30th December, 2010 under section 274 of the Income Tax Act (the Act) submitted that the Assessing Officer while issuing notice has not scored off the specific charge which was sought to be invoked by him. Accordingly in these peculiar circumstances the levy of penalty was contrary to the settled legal position as appreciated by the various Benches of the ITAT relying upon the decision of the Hon’ble Karnataka High Court in the case of ACIT vs. Manjunatha Cotton. (2013) 359 ITR 565.

3. The Ld. Sr.D.R. Ms. R.Singh invited attention to the assessment order and the penalty order and submitted that the penalty on facts has been correctly levied. It was her submission that the assessee has failed to appear before the Assessing Officer in the penalty proceedings and it

was also her argument that there is no specific ground assailing the levy of penalty on the grounds that the specific charge was not spelt out. Even otherwise it was her submission that the lapse if any is not fatal to the levy of penalty and in the eventuality decision is to be given on the basis of the said shortcoming, she would seek time to prepare as the said issue was not argued before the CIT (Appeals), or raised before the Assessing Officer and even in the present proceedings there is no specific ground on the said issue.

4. The Ld.AR maintaining that even if the specific ground was not raised before the CIT (Appeals), the specific ground it was submitted can be raised in the present proceedings as it was an omnibus ground and the said argument could be raised.

4.1 It was his submission that even on merits the ground of the assessee deserves to be allowed. Inviting attention to the Section 35D of the Income Tax Act it was his submission that the claim of capital expenditure to the extent of 1/5 is permissible under law. In the facts of the present case it was his submission that it is no one's case that the assessee has not disclosed the relevant details and facts for claiming the said expenditure in terms of the statutory provisions. The sole fact that the AO was of the opinion that the expenditure cannot be allowed under section 35D by itself does not mean that the assessee has either filed inaccurate particulars of income or has concealed the particulars as all necessary facts and details relatable to the said claim were made available to the Assessing Officer. In these circumstances the reliance if any placed by the Revenue on the decision of the Apex Court in the case of Zoom Communications 327 ITR 510 (Delhi) on the oft repeated plea that only a miniscule percentage of cases are picked up by the revenue it was submitted cannot be of any help. It was his submission that the assessee has no role to play on the policies of the Ministry whether to pick all cases or some cases. The plea that miniscule cases are picked up cannot be a ground to hold that in all cases picked up if an addition is maintained penalty is automatically levied. Referring to the facts it was his submission that the assessee company had claimed the amount of ROC expenses in its Profit and Loss account which has been disallowed by the Assessing Officer holding it to be capital in nature. It was his submission that simply because the addition has been accepted by the assessee by itself does not invite penalty proceedings. Inviting attention to the record it was his submission that the assessee has declared an income of Rupees

112 crores odd and the disallowance of the expenditure made in the assessment order was considered to be small when compared with the cost of litigation. Thus not having challenged the addition by itself does not falsify the claim put forth. The explanation offered in the penalty proceeding it was submitted cannot be brushed aside. The fact that the assessee had duly disclosed all details relatable to the said expenditure incurred duly reflected the same in its books of accounts, accordingly in the circumstances it was his submission there was no occasion to hold that it was an act of concealment of income by the assessee company. Similarly there can be no charge of furnishing of inaccurate particulars as the mere fact that the claim of the assessee has been held to be unsustainable by the Assessing Officer cannot by itself amount to furnishing of inaccurate particulars in order to levy penalty on the assessee. Reliance was placed upon the decision of the Apex Court in the case of Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC). Reliance was also placed upon CIT(A) vs. Brahmaputra Consortium Ltd. (2012) 348 ITR 339 (Delhi) and order dated 29/05/2015 in ITA 371/Del/2013 in the case of India Renewable Energy Development Agency Ltd. Vs. DCIT and order dated 10/07/2014 in ITA 953/KOL/2012 in the case of ACIT versus Khadim India Ltd.

5. We have heard the rival submissions and perused the material available on record admittedly as per record the claim put forth by the assessee in regard to the ROC expenditure made under section 35 D was not allowed by the assessing officer. A perusal of the said provision shows that the said section contemplates granting proportional deduction of the preliminary expenses in the case of an Indian company or a person, the assessee is an Indian Company. A proportional deduction has been given a statutory recognition. The preliminary expenses permissible for amortization contemplated by the statute are for expenditure in connection with preparation of feasibility report; preparation of project report; conducting Mark market survey etc; legal charges for drafting any agreement; and in case the assessee is a company then the charges for drafting the Memorandum and Articles of Association of the company; printing of the Memorandum and Articles of Association; fees for registering the company and the provisions of the companies act 1956 (now companies act 2013) and expenditure in connection with the issue for public subscription etc are also permissible for claiming amortization in terms of the statutory limit. Admittedly in the facts the present case all

necessary details were made available by the assessee the mere fact that the addition made in the course of assessment proceedings in the peculiar facts of the present case was not challenged in appeal by itself is neither here nor there. Satisfied by the explanation filed after giving our due consideration to the material available on record and the statutory provisions relying upon the proposition of law as laid down by the Apex court in the case of Reliance Petro products private limited cited supra the impugned order is set aside and the penalty is directed to be quashed

6. In the result the appeal of the assessee is allowed

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 11.02.2019
*Veena / AG (Chd)

sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

This order was directly dictated on Computer to the P.S.	03.01.2019
Draft dictated on	04.01.2019 / 06/02/2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
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.	