

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH.H.S.SIDHU, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.5569/DEL/2013
Assessment Year: 2004-05

DCIT Circle –1 (1) New Delhi	Vs	Airline Allied Services Ltd. Room No.205, 2nd Floor, G- 5, Building, Termina01, IGI Airport, New Delhi PAN No.AAACA1517B
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Janardan Das, Sr. DR
Respondent by	Sh. A. K. Srivastava, CA

Date of hearing:	20/02/2019
Date of Pronouncement:	21/02/2019

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue preferred against the order of the CIT(A)-4, New Delhi dated 15.07.2013 pertaining to A. Y. 2004-05.

2. The revenue is aggrieved by the deletion of the penalty of Rs.31,99,806/- imposed by Assessing Officer u/s 271 (1) (c) of the Act.

3. Briefly stated the facts of the case are that the return was filed on 30.10.2004 which was revised on 31.03.2005. The assessment was completed on 31.11.2006 u/s 143(3) of the Act on total income of Rs.11,28,40,516/-. The computation of MAT on account of book profit was filed as per which there was a tax payable u/s 115JB of the Act.

4. Later on the completed assessment was reopened by issue of notice u/s 148 of the Act. The reasons for reopening the assessment was that the assessee had made provision for operating expenses of Rs.7.34 crores out of which only Rs.4.85 crores was added back by the assessee in the computation of income. The balance of Rs.2.49 crores remained to be added to the income.

5. The reassessment proceedings were completed by order dated 21.12.2011 framed u/s 143(3) r/w section 147 of the Act at total taxable income of Rs.Nil. Once again the tax payable was computed as per MAT u/s 115 JB of the Act.

6. The Assessing Officer initiated penalty proceedings u/s 271 (1) (c) of the Act on the balance amount of the provision which was added by the Assessing Officer in the reassessment proceedings and levied penalty of Rs.31,99,806/-.

7. The assessee carried the matter before the CIT(A) and contended that due to inadvertent mistake the provision could not be added back which was added back during the course of the assessment proceedings and prayed for the deletion of the penalty.

8. The CIT(A) was convinced with the contention of the assessee and drawing support from the decision of the Hon'ble Supreme Court in the case of Price Water Coopers Private Limited 348 ITR 306 deleted penalty so levied.

9. Before us the Ld. DR relied upon the judgment reported in 295 ITR 244.

10. Per contra the Counsel for the assessee stated that the assessee has been assessed on MAT as per the provision of the section 115 JB of the Act and therefore, it is not a fit case for levy of penalty u/s. 271(1) (c) of the Act.

11. We have carefully considered the orders of the authorities below. It is not in dispute that the original assessment as well as reassessment has been computed at nil income and the tax paid by the assessee is on book profit u/s 115 JB of the Act. In our considered opinion the facts of the case in hand clearly show that this is not a fit case for levy of penalty u/s 271 (1) (c) of the Act. In the light of the following circular of CBDT :-

“Subject: Penalty u/s 271(1)(c) wherein additions/disallowances made under normal

provisions of the Income Tax Act, 1901 hut tax levied under MAT provisions u/s 115 JB/ 1 15JC, for cases prior to AD 2016-17-rcg.-

Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act 2000 with effect from I-4-2001.

2. Under clause (iii) of sub-section (1) of 'section 271 of the Act. penalty for concealment of income or furnishing inaccurate

particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed.

3. *In this context. Hon'ble Delhi High Court in its judgment dated 26.8.2010 in IT A No. 1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-1.L-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act. then penalty under section 271(1)(c) of the Act could not be imposed with reference to additions & disallowances made under normal provisions. The judgment has attained finality.*

4. *Subsequently, the provisions of Explanation 4 to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015. which provide for the method of calculating the amount of tax sought to be evaded for situation-, even where the income determined under the general provisions is less than the income declared for the purpose of MAT u/s 115IB of the Act.*

The substituted Explanation 4 is applicable prospective!} w.e.f. 01.04.2016.

5. *Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016. where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115.1 B of the Act, then penalty under 271 (1) (c) of the Act. is not attracted with*

reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016. if any adjustment is made in the income computed for the purpose of MAT. then the levy of penalty u/s 271 (1)(c) of the Act. will depend on the nature of adjustment.

6. *The above settled position is to be followed in respect of section 115 JC of the Act also.*

7. *Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any. on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.”*

12. In the light of the aforestated circular of the CBDT we hold that the levy of penalty u/s 271 (1) (c) of the Act is not justified accordingly the order of the CIT(A) is upheld and appeal filed by the revenue is dismissed.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 21.02.2019

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .02.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.02.2019
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 file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

