

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

**BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-6574/Del/2015
(Assessment Year: 2002-03)**

Dy. Commissioner of Income Tax, Circle-11(1), New Delhi.	Vs.	M/s. Hero Motorcorp Ltd. 34, Basant Lok, Vasant Vihar, New Delhi- 110057, PAN : AAACH0812J
Appellant		Respondent

**Assessee by : Sh. Gaurav Jain, Adv.
Revenue by : MS. Rinku Singh, Sr.DR**

Date of Hearing	26.02.2019
Date of Pronouncement	28.02.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal is preferred by the department against order dated 27.10.2015 passed by the Ld. CIT (Appeals)-16, New Delhi wherein, vide the impugned order, the Ld. CIT (Appeals) has deleted the penalty of Rs. 29,89,941/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act') for assessment year 2002-03.

2. The brief facts of the case are that the assessee is in the business of manufacture of motorcycles. The return of income was

filed declaring an income of Rs. 608,36,69,250/-. The case was selected for scrutiny and, subsequently, the assessment was completed at an income of Rs. 641,60,95,880/- after making certain disallowances/additions. The assessee had made a claim of deduction u/s 80IA of the Act amounting to Rs. 83,75,186/- in respect of its power generation unit at its manufacturing facility at Gurgaon. The AO, however, disallowed the assessee's claim for deduction by holding that the inter-unit transfer of power from the Power Plant should have been at the price at which the Haryana State Electricity Board was supplying the same to the assessee's Plant i.e. Rs. 4.05 per unit. Since the cost of generation was Rs. 4.56 per unit, which was more than the market value taken by the Assessing Officer, no deduction under section 80IA of the Act was allowed. On appeal, the Ld. CIT (Appeals) upheld the disallowance and on further appeal, the ITAT also upheld the disallowance of deduction. Subsequently, penalty of Rs. 29,89,941/- was imposed by the Assessing Officer. The Ld. CIT (Appeals) deleted the penalty on the ground that the issue was a debatable one and now the department is before the ITAT challenging the deletion of the penalty.

3. At the outset, the Ld. Authorised Representative of the assessee/respondent submitted that the Hon'ble Delhi High Court

has admitted the assessee's appeal against the quantum addition confirmed by the ITAT on which the penalty had been imposed by the AO but deleted by the Ld. CIT (Appeals). The Ld. Authorised Representative placed on record copy of order of the Hon'ble High Court of Delhi in ITA no. 31/2014 wherein vide order dated 15.07.2014, the Hon'ble High Court had framed the following substantial question of law:

“Whether the Income Tax Appellate Tribunal was right in disallowing the claim under Section 80IA of the Income Tax Act, 1961 for violation of sub section (8)”?

3.1 The Ld. Authorised Representative submitted that in view of judgment of the Hon'ble Delhi High Court in the case of CIT vs. Liquid Investment & Trading Company in ITA no. 240/2009, no penalty was leviable as the issue on which the penalty had been levied was a debatable issue. It was prayed that the order of the Ld. CIT (Appeals) be upheld.

4. In response, the Ld. Sr. Departmental Representative supported the orders of the Assessing Officer. It was vehemently argued that, undisputedly, the quantum addition/disallowance had been confirmed by the ITAT and, therefore, the penalty had been wrongly deleted by the Ld. CIT (Appeals). The Ld. Sr. DR also placed reliance on the following judicial precedents:

(1) Union of India v. Dharamendra Textile Processors [(2007) 295 ITR 244]; (2) CIT vs. Zoom Communication (P.) Ltd. [191 Taxman 179 (Delhi) / [2010] 327 ITR 510 (Delhi) / [2010]233 CTR 465]; (3) CIT vs. Moser Baer India Ltd. (184 Taxman 8 (SC)/ [2009] 315 ITR 460 (SC) / [2009] 222 CTR 213); (4) Khandelwal Steel and Tube Traders vs. ITO [2018] 95 taxmann.com 15 (Madras); (5) CIT vs. Gates Foam & Rubber Co [91 ITR 467] CIT vs. India Seafood [105 ITR 467].

4.1 It was prayed the order of the Ld. CIT (Appeals) deserved to be set aside and the order of the AO imposing the penalty restore.

5. We have heard the rival submissions and have also perused the material on record. Undisputedly, this is a case where the penalty levied pertains to an issue in respect of which the Hon'ble Delhi High Court, in assessee's own case, for the relevant assessment year has framed substantial question of law. Thus, it is very much apparent that the issue is a debatable issue. Accordingly, in view of judgment of the Hon'ble Delhi High Court in the case of CIT vs. Liquid Investment & Trading Company (supra), we find no reason to interfere with the act of the Ld. CIT (Appeals) in deleting the penalty. We also note that a similar penalty on identical addition was deleted by the ITAT Delhi Bench in assessee's own case for assessment year 2003-04 in ITA no.

4410/Del/2014 vide order dated 19.12.2018. Accordingly, in view of our observations as mentioned aforesaid, we dismiss the grounds raised by the department.

6. In the final result appeal of the department stands dismissed.

Order pronounced in the open court on 28.02.2019.

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 28.02.2019
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	28/02/2019
Date on which the typed draft is placed before the dictating Member	28/02/2019
Date on which the typed draft is placed before the Other Member	28/02/2019
Date on which the approved draft comes to the Sr. PS/PS	28/02/2019
Date on which the fair order is placed before the Dictating Member for pronouncement	28/02/2019
Date on which the fair order comes back to the Sr. PS/PS	28/02/2019
Date on which the final order is uploaded on the website of ITAT	28/02/2019
Date on which the file goes to the Bench Clerk	28/02/2019
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	