

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 3452/Ahd/2016
WITH
CROSS OBJECTION No. 15/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2000-01)

DCIT Circle 1(1)(1), Ahmedabad	बनाम/ Vs.	Applitech Solutions Ltd. 503, Paritosh Building, Usmanpura, Ahmedabad 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA8332P		
(Appellant / Respondent)	..	(Respondent / Cross Objector)

राजस्व की ओर से/Revenue by :	Shri Vinod Tanwani, Sr. D.R.
अपीलार्थी ओर से /Assessee by :	Shri Anil Kshatriya & Shri Alay Kshatriya, A.Rs.

सुनवाई की तारीख / Date of Hearing	26/03/2019
घोषणा की तारीख /Date of Pronouncement	28/03/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 27.10.2016 in the matter of imposition of penalty under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) arising from the penalty order dated 30.03.2016 passed by the Assessing Officer (AO) concerning assessment year 2000-01.

2. The assessee has also filed cross objection in the Revenue's appeal as captioned above.

ITA No. 3452/Ahd/2018 (Revenue's appeal)

3. The grounds of appeal raised by the Revenue reads as under:-

“That the ld. CIT(A) erred in law and on facts in deleting the penalty amount of Rs.1,84,22,780 levied u/s.271(1)(c) of the I.T. Act.”

4. When the matter was called for hearing, the learned AR for the assessee in Revenue's appeal referred to the penalty order dated 30.03.2016 for the AY 2000-01 in question and submitted that AO has tabulated various additions and disallowances at page no.1 of its order. However, all the additions and disallowances stood deleted by the order of the Tribunal in quantum proceedings in ITA No. 1600 & 1452/Ahd/2014 & Ors. dated 19.04.2016 except disallowance of foreign travel expenses amounting to Rs.16,56,920/-. The learned AR made two fold submissions to defend the order of the CIT(A) and its cross objection namely: (i) the relevant basic details towards foreign travel expenses namely bills, vouchers, place of visit etc. has been provided to the lower authorities as recorded by the CIT(A) at page no.25 of its order in challenge. Therefore, where all the material facts have been placed on record which facts in themselves have not been found to be untrue, the imposition of penalty under s. 271(1)(c) of the Act is not justified merely on the ground that the purpose of travel could not be demonstrated to the satisfaction of the AO. The learned AR submitted that out of the substantial additions, all the additions have been deleted and a small amount towards foreign travel has been retained by the Tribunal which has not been challenged due to smallness involved. The learned AR submitted that merely because some disallowance has been carried out that does not *ipso facto* give

inference of any concealment or furnishing of inaccurate particulars *per se*. The learned AR thus submitted that no interference with the order of the CIT(A) is called for on this ground alone. (ii) The penalty amount though specified by the Revenue at Rs.1,84,22,780/- levied under s.271(1)(c) of the Act, all additions and disallowances giving rise to the aforesaid penalty quantum stood deleted by the ITAT except the penalty of foreign travel expenses of Rs.16,56,920/-. In the circumstances, when the penalty is correctly quantified on the purported concealment / inaccurate particulars of income with reference to foreign travel expenses, the amount of penalty would be less than the threshold limit of Rs.20 Lakhs and therefore, the appeal of the Revenue is liable to be struck down as not maintainable owing to low tax effect in terms of CBDT Circular No.3 of 2018 dated 11/07/2018.

5. The Learned DR, on the other hand, relied upon the order of the AO and submitted that the business purpose of foreign travel expenses has not been established and therefore, penalty was justified in view of Explanation 1 to Section 271(1)(c) of the Act.

6. We have carefully considered the rival submissions. The correctness of imposition of penalty under s. 271(1)(c) of the Act on disallowance of foreign travel expenses is in question. As pointed out on behalf of the assessee, it is manifest that the penalty under s. 271(1)(c) of the Act cannot be imposed both on merits as well as on account of non-maintainability of the Revenue's appeal. The relevant primary details of foreign travel expenses to support the foreign travel expenses are available on record. In the circumstances, notwithstanding, the disallowance confirmed by the Tribunal in the quantum proceedings, the penalty of strict nature is not sustainable in view of long line of judicial precedents including the decision of the

Hon'ble Supreme Court in Reliance Petroproducts 322 ITR 158 (SC). Secondly, the appeal of the Revenue itself is not maintainable owing to low tax effect in terms of CBDT Circular No.3 of 2018 dated 11/07/2018. Therefore, the appeal of the Revenue is dismissed on both counts.

7. The cross objection raised by the assessee is also dismissed as infructuous owing to aforesaid reasons.

8. In the combined result, both the appeal of the Revenue and cross objection of the assessee are dismissed.

This Order pronounced in Open Court on 28/03/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 28/03/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।