

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3369 /Del./2016
(ASSESSMENT YEAR : 2009-10)**

DCIT
Circle 19(2),
New Delhi

Vs.

PTC India Ltd.,
2nd Floor, NBCC Tower-15,
Bhikaji Cama Place,
New Delhi
PAN : AABCP7947F
Respondent

Appellant

**C.O. No.269 /Del./2016
(in ITA no. 3369/Del/2016)
(ASSESSMENT YEAR : 2009-10)**

PTC India Ltd.,
2nd Floor, NBCC Tower-15,
Bhikaji Cama Place,
New Delhi
PAN : AABCP7947F

Vs.

DCIT
Circle 19(2),
New Delhi

Appellant

Respondent

ASSESSEE BY : Sh. Sant Kapoor, Adv., Sh. Salil Kapoor, Adv.
& Sh. Shivansh Pandya, Adv.

REVENUE BY : Smt. Rinku Singh, Sr.DR

Date of Hearing : 04 .04.2019

Date of Order : 10 .04.2019

ORDER**PER KULDIP SINGH, JUDICIAL MEMBER :**

Aforesaid appeals as well as Cross objections having been emanated from same impugned order dated 30.03.2016 passed by Ld. CIT(A) are being decided by way of composite order to avoid of repetition of discussion.

2. The appellant Dy. Commissioner of Income Tax, New Delhi (hereinafter referred to as 'the revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 30/03/2016 passed by Ld. Commissioner of Income Tax(Appeals)-7, New Delhi qua the Assessment Year 2009-10 on the grounds inter alia that :

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in law in deleting the penalty levied by the AO u/s 271(1)(c) amounting to Rs. 1,46,566,380/- ignoring the fact that the assessee has made wrong claim for deduction under the provision of Income Tax Act, 1961.

2. The Appellant craves to be allowed to add any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal.”

3. Cross objector PTC India Ltd. hereby referred to assessee filed the Cross Objections challenging impugned order dated 30.03.2016 passed

by Ld. CIT(A)-7, New Delhi qua the assessment year 2009-10 on the grounds, inter alia, that :

“1. That the notice issued u/s 271(1)(c) and order passed under said section imposing penalty of Rs. 1,46,56,380/- are illegal, bad in law and without jurisdiction.

2. That no valid satisfaction was recorded before initiation of penalty proceeding u/s 271(1)(c) and as such the notice u/s 271(1)(c) and penalty order passed under said section are without jurisdiction and liable to be quashed.

3. That the penalty order is liable to be quashed since the AO is himself not sure as to whether the assessee has concealed its income or that the assessee has furnished in accurate particulars of income.

4. That in the absence of specific charge, the levying of penalty under section 271(1)(c) is illegal and without jurisdiction.

5. That the respondent reserves the right to add/amend/ alter the grounds of Cross Objection.”

4. Briefly stated that facts necessary for adjudication of the controversy at hand are : on the basis of completed assessment u/s 143(3) at the income of Rs. 55,97,08,040/- by making additions to the tune of Rs. 2,96,680/- and 5,49,40,363/- on

account of disallowance of prior period expenses and disallowance u/s 14A read with Rule 8D of the Act, Assessing Officer initiated the penalty proceedings by way of issuance of notice u/s 274 read with Section 271(1)(c). Declining the contentions raised by the assessee that penalty proceedings are not sustainable on the basis of disallowance of expenses and on ground of making disallowance u/s 14A of the Act, AO levied the penalty of Rs. 1,46,56,382/- @ 100% for concealing the particulars of income or furnishing inaccurate particulars of income u/s 271(1)(c).

5. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the penalty by allowing the appeal. Feeling aggrieved revenue as well as assessee have come up before the Tribunal by way of filing present appeal as well as Cross Objections.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. At the very outset, it is brought to the notice of the Bench by the Ld. AR for the assessee that in the quantum proceedings appeal

of the assessee before Tribunal bearing ITA no. 6223/Del/2012 for A.Y. 2009-10 the issue as to disallowance u/s 14A has since been remanded back by the Tribunal vide order dated 08.01.2019 to decide afresh by the Assessing Officer.

8. In view of the matter, we are of the considered view that without entering into merits of this case the penalty proceedings are not sustainable, hence deleted, as the quantum proceedings have already been remanded back to the AO to decide afresh. So, AO is at liberty to initiate the penalty proceedings, if any, after passing fresh assessment order. Consequently appeal filed by the revenue as well as Cross Objection filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 10th Day of April, 2019.

**Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated: 10th Day of April, 2019
BR**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI**

Date of dictation	05.04.2019
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 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	