

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7776/Del./2018  
Assessment Year 2014-2015

M/s. Netway India Pvt. Ltd., C-5/6 (LGF), Grand Vasant, Vasant Kunj, New Delhi. PAN AABCN1019J	vs.	The Income Tax Officer, Ward-18(1), Room No.225, C.R. Building, I.P. Estate, Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri T.R. Talwar, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	29.04.2019
Date of Pronouncement :	01.05.2019

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-6, Delhi, Dated 10.09.2018, for the A.Y. 2014-2015, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly the facts of the case are that return of income was filed by assessee declaring total income at NIL after setting off brought forward losses to the extent of Rs.49,92,241/- with current year's income. However, the

tax of Rs.6,41,751/- was paid on book profits of Rs.33,67,887/- computed under the MAT provisions. The A.O. considered the issue of excess claim of depreciation in the assessment order and made the addition of Rs.18,77,409/-. The income of assessee was thus computed at Rs.2,50,221/-, after adjusting brought forward losses. However, the income was computed under section 115JB of the I.T. Act at Rs.33,67,887/-, on which, assessee has paid the tax. The A.O. accordingly levied the penalty under section 271(1)(c) of the I.T. Act, 1961 on excess claim of depreciation above. The Order of the A.O. has been confirmed by the Ld. CIT(A).

3. Learned Counsel for the Assessee, at the outset, submitted that issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of CIT vs. Nalwa Sons Investments Ltd., (2010) 327 ITR 543 (Del.) in which it was held as under :

*“Held where the income computed in accordance with the normal procedure is less than the income determined by legal fiction, namely, the book profit u/s 115 JB of the Act*

*and the income of the assessee is assessed under section 115 JB and not under the normal provisions , the tax is paid on the income assessed u/s 115JB of the Act. Concealment of income would have no role to play and would not lead to tax evasion. Therefore, penalty cannot be imposed on the basis of disallowance or additions made under the regular provisions.”*

4. The Ld. D.R. relied upon the Orders of the authorities below.

5. After considering the rival submissions, I am of the view that penalty is not leviable in the matter under section 271(1)(c) of the I.T. Act. Admittedly, in the present case income computed under section 115JB of the I.T. Act is higher than the income computed under normal provisions, upon which, tax have also been paid. Therefore, the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of CIT vs. Nalwa Sons Investments Ltd., (supra). I, accordingly, set

aside the Orders of the authorities below and cancel the penalty.

6. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 01<sup>st</sup> May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.