

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

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER

ITA No.7388/Del/2018

Assessment Year: 2014-15

Harisons Diamonds P. Ltd. 2606/4, Shop NO. 101, 1 st Floor, Soliator Plaza, Karol Bagh, New Delhi-110005 PAN: AACCH1163N	Vs	DCIT Circle-11(1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Pranshu Singhal, CA & Ms. Mansi Jain, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	06/05/2019
Date of Pronouncement:	21/05/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 15th September, 2018 of the CIT(A)-4, New Delhi for A. Y 2014-15.

2. Levy of penalty of Rs.82,000/- lacs u/s 271(1)(C) by the Assessing Officer and upheld in the CIT(A) is the only issue raised by the assessee in the various grounds of appeal:-

3. Facts of the case, in brief, are that the assessee is a Private Limited Company and engaged in the business of jewellery items like gold, diamonds etc. It filed its return of income on 24th September, 2014, declaring total income of Rs. 40,76,950/-. The A.O during the course of assessment proceedings observed from the details filed by the assessee that it has debited interest expenses incurred in relation to a car which was purchased in the name of the Director. Further, assessee also debited Motor Car Repairs and Maintenance and depreciation. The total of such expenditure debited to profit and loss account was Rs.2,51,941/-. Since, the vehicle was not registered in the name of the Company, the A.O asked the assessee to explain as to why these expenses should not be disallowed. The assessee agreed for the above disallowance for which the A.O made the addition of Rs. 2,51,941/-. Similarly, out of total business promotion expenses of Rs.10,23,919/-, the A.O disallowed an amount of Rs. 1,02,392/- on ad-hoc basis @ 10% of such expenses on the ground that the assessee failed to justify with documentary evidence regarding the claim of such expenses for the purpose of business.

4. The assessee did not challenge the above additions. The A.O initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act. Rejecting the various explanations given by the assessee, the

A.O levied penalty of Rs. 82,000/- being 100 % of tax sought to be evaded u/s 271(1)(c) of the I.T Act. While doing so, he relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Zoom Communication Pvt. Ltd reported in 327 ITR 510 Del.

5. Before the CIT(A), it was submitted that the business was carried on by Mr. Ashwani Singla (Proprietor) under the name and style of M/s Harisons Diamonds, which was taken over by the assessee company, M/s Harisons Diamonds Private Limited on 1/11/2009. Upon such take over, the proprietor Mr. Ashwani Singla became the director of the assessee company. Although all these details were furnished before the A.O, however, he ignored such details and levied penalty. So far as, the disallowance of expenses on ad-hoc basis is concerned it was argued that penalty cannot be levied on estimated addition. The assessee drew the attention of the CIT(A) to the notice issued by the A.O and it was submitted that no specific charge has been mentioned in the show cause notice as the inappropriate words have not been struck off. The decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565, the decision of Hon'ble Supreme Court in the case of CIT Vs. SSA's Emerald Meadows wherein the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue and various other decisions were brought to be notice of the CIT(A).

6. However, the Ld.CIT (A) was not satisfied with the arguments advanced by the assessee and upheld the penalty levied by the A.O u/s 271(1)(c) of the I.T Act.

7. Aggrieved of such order of the CIT (A), the assessee is in appeal before the Tribunal.

8. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the assessee during the course of assessment proceedings has agreed for the addition of the motor car expenses, depreciation and interest on such loan totaling to Rs.2,51,941/-. Further, the A.O has made another addition of Rs. 1,02,392/- on account of ad-hoc disallowance of business promotion expenses being 10% of the total expenditure for which the assessee is not in appeal. I find assessee during the course of assessment proceedings as well as appellate proceedings had categorically stated that the business of the assessee which was earlier carried on by the proprietor in the name and style of M/s Harisons Diamonds was taken over by the assessee company M/s Harisons Diamonds Pvt. Ltd on 1/11/2009. Upon such take over the proprietor Mr. Ashwani Singla became the director of the assessee company w.e.f. 1/11/2009. There is no such disallowance of such depreciation and motor car expenses and interest on loan from Assessment Year 2010-11 to 2013-14. Although, the vehicle was registered in the name of the Director of the assessee Company, however, the expenses were incurred by the assessee company

itself and the vehicle was used for the business of the assessee Company. Further, all particulars were made available before the A.O and there was no such concealment. Hon'ble Supreme Court in the case of CIT (A) Vs. Reliance Petro Products Pvt. Ltd. 321 ITR 158 has held that merely because the assessee has claimed the expenditure which claim was not acceptable or was not accepted by the revenue that by itself could not attract the penalty u/s 271(1)(c) of the I.T Act. In my opinion merely because the assessee in the instant case, has accepted the disallowance during the course of assessment proceedings that by itself will not preclude the assessee from taking an alternate argument before the Tribunal during penalty proceedings. In view of the above discussion and since full particulars are available before the A.O during the course of assessment proceedings, therefore, penalty u/s 271(1)(c) in my opinion is not attracted on motor car expenses and depreciation of Rs.2,51,941/-.

9. So far as the other addition is concerned, i.e. disallowance of ad-hoc expenses of Rs. 1,02,392 out of the business promotion expenditure, I find, the same is on ad-hoc basis. It has been held in various decisions that penalty u/s 271(1)(c) of the I.T Act is not sustainable on ad-hoc disallowance of expenses. In view of the above discussion, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271(1) (c) of the I.T Act. The grounds raised by the assessee are accordingly allowed.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court at the time of hearing itself i.e., on 21 .05.2019.

Sd/-

(R.K PANDA)
ACCOUNTANT MEMBER

R.N*

Date:- 21 .05.2019

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.05.2019
Date on which the typed draft is placed before the dictating Member	08.05.2019
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	21.05.2019
Date on which the final order is uploaded on the website of ITAT	21.05.2019
Date on which the file goes to the Bench Clerk	21.05.2019
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	

