

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 2282/DEL/2019  
[A.Y 2011-12]

M/s Samin Tekmindz India Pvt Ltd  
301, 3<sup>rd</sup> Floor, A-115, Shakarpur  
New Delhi

Vs.

The A.C.I.T  
Circle 22(1)  
New Delhi

PAN No: AALCS 0909 E

[Appellant]

[Respondent]

**Date of Hearing** : **05.08.2019**  
**Date of Pronouncement** : **05.08.2019**

Assessee by : Shri S. Krishnan, Adv  
Revenue by : Shri N.K. Bansal, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 8, New Delhi dated 24.01.2019 pertaining to assessment year 2011-12.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] by ignoring the mandate given by the CBDT in its Circular No. 25/2015 dated 31.12.2015.

3. The roots for levy of penalty lie in the assessment order dated 28.01.2014 framed u/s 143(3) of the Act. The returned loss of Rs. 4,36,27,946/- was assessed at a loss of Rs. 2,12,96,520/- after making addition of Rs. 2,23,31,431/-.

4. Tax has been levied u/s 115JB of the Act on book profit of Rs. 6,20,00,680/- on which tax amounting to Rs. 1,23,57,046/- was paid in full. However, penalty proceedings were separately initiated and notices were issued and served upon the assessee. In response to the show cause notice, neither the assessee attended the proceedings nor any reply was filed. The Assessing Officer proceeded ex parte and levied penalty of Rs. 74,16,268/-.

5. The assessee agitated the matter before the CIT(A) and drew his attention to the decision of the Hon'ble Delhi Court in the case of Nalwa Sons Investment Ltd 327 ITR 543 and further pointed out that

this judgment has been accepted by the CBDT vide its Circular No. 25/2015 dated 31.12.2015.

6. However, the CIT(A) was not convinced and was of the opinion that the ratio laid down by the Hon'ble High Court of Delhi in the case of Nalwa Sons Investment Limited [supra] does not apply where the deeming fiction of section 115JB of the Act gets attracted. The CIT(A) also observed that as per the CBDT Circular, the substituted Explanation 4 is applicable w.e.f 01.04.2016 and not from A.Y 2016-17 and since penalty order is dated 30.03.2017, the said Circular is not applicable.

7. Before us, the Id. Counsel for the assessee vehemently stated that the CIT(A) has neither appreciated the judgment of the Hon'ble Delhi High Court in the case of Nalwa Sons Investment Ltd [supra] nor has appreciated the CBDT Circular. It is the say of the Id. AR that the issue involved under consideration is squarely covered in favour of the assessee and against the revenue by the decision of the Hon'ble High Court of Delhi in the case of Nalwa Sons Investment Ltd as well as the CBDT Circular No. 25/2015 [supra].

8. Per contra, the ld. DR strongly supported the findings of the CIT(A).

9. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessment completed under normal provisions of the Act was subject to levy of tax on book profit u/s 115JB of the Act. There is also no dispute that the penalty proceedings have been initiated to levy penalty on the tax made under normal provisions of the Act. The dispute is now well settled in favour of the assessee and against the revenue by the decision of the Hon'ble High Court of Delhi in the case of Nalwa Sons Investment Ltd [supra], which has been accepted by the CBDT vide its Circular No. 25/2015, which reads as under:

"CIRCULAR NO. 25/2015  
F.No.279/Misc./140/2015/ITJ  
Government of India  
Ministry of Finance Central Board of Direct Taxes  
New Delhi,

31st December, 2015

Subject: Penalty u/s 271(1)(c) wherein  
additions/disallowances made under normal provisions of  
the Income Tax Act, 1961 but tax levied under MAT  
provisions u/s 115JB/115JC, for cases prior to A.Y. 2016-17-

reg.-

Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act 2000 with effect from 1-4-2001.

2. Under clause (iii) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed.

3. In this context, Hon'ble Delhi High Court in its judgment dated 26.8.2010 in ITA No.1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010- LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty under section 271(1)(c) of the Act could not be imposed with reference to additions/disallowances made under normal provisions. The judgment has attained finality.

4. Subsequently, the provisions of Explanation 4 to subsection (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT u/s 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f. 01.04.2016.

5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 27i(i)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 27i(i)(c) of the Act, will depend on the nature of adjustment.

6. The above settled position is to be followed in respect of section 115JC of the Act also.

7. Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

(Ramanjit Kaur Sethi)  
DCIT(OSD) (ITJ), CBDT, New Delhi"

10. In the light of the aforementioned Circular of the Board and the decision of the Hon'ble High Court of Delhi in the case of Nalwa Sons Investment Ltd [supra], we do not find any merit in the levy of penalty. We, accordingly, direct the AO to delete the penalty of Rs. 74,16,268/-. The ground raised by the assessee is allowed.

11. In the result, the appeal filed by the assessee in ITA No. 2282/DEL/2019 is allowed.

**The order is pronounced in the open court on 05.08.2019.**

Sd/-

[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 05<sup>th</sup> August, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
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	