

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C", NEW DELHI**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.5934/Del/2016  
Assessment Year : 2012-13**

M/s. Hind Air Star Pvt.Ltd., B-3, Friends Colony (West), New Delhi-110065. PAN-AABCH0805L	<b>Vs.</b>	DCIT, Circle-11(2), New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Sh. Amit Katoch, Sr.DR	
<b>Date of hearing</b>	<b>05.08.2019</b>	
<b>Date of pronouncement</b>	<b>07.08.2019</b>	

**ORDER**

**PER SUCHITRA KAMBLE, J.M:**

This appeal by the assessee is directed against the order dated 30.09.2016 passed by the CIT(A)-12, New Delhi in relation to assessment year 2012-13 on the following grounds:-

1. *“That the penalty imposed by the AO u/s 271(1)(c) of the IT Act at Rs.5,63,979/- and upheld by the CIT(Appeals) is arbitrary, unjust and bad in law.*
2. *That the assessee has not furnished any inaccurate particulars, as alleged by the AO, in respect of the disallowance made u/s 40A(3) at Rs.4,86,001/- and has also neither furnished any inaccurate particulars nor concealed particulars in respect of disallowance of 10% of the business promotion expenses made at Rs.12,52,265/- and consequently the levy of penalty u/s 271(1)(c) of the Act at Rs.5,63,979/- is arbitrary, unjust and bad in law.”*

2. The assessment was completed u/s 143(3) on 02.03.2015 at income of Rs. 1,23,39,600/-. Penalty u/s 271(1)(c) of the Income Tax Act,

1961 was initiated for furnishing of inaccurate particulars of income on account of addition made u/s 40A(3) of the Act amounting to Rs. 4,86,001/- and addition made on account of disallowance of business promotion expenses of Rs. 12,52,265/- on account of non justification of the said expenses/claims. Further notice dated 02.03.2015 for levy of penalty u/s 274 r.w.s. 271(1)(c) was issued and served upon the assessee. Further, show cause notice for levy of penalty u/s 271(1)(c) dated 31.07.2015 was issued and served on the assessee. In response thereto, the assessee filed reply dated 19.09.2015. The Assessing Officer imposed penalty on both the additions.

3. Being aggrieved by the Penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

4. During the hearing, none appeared for the assessee despite the notice has been served upon the assessee at the given address in the Form 36 of appeal memo. Therefore, we are proceeding with the matter by taking into account the submissions of the assessee before the Assessing Officer and the CIT(A).

5. The Ld. DR relied upon the Penalty order, Assessment order and the order of the CIT(A).

6. We have heard the Ld. DR and perused the relevant material available on record. As regards penalty in respect of disallowance of Rs. 4,86,001/- u/s 40A(iii) of the Act, the said issue is debatable and therefore it cannot be stated that the assessee filed inaccurate particulars of income or concealed the income. Therefore, penalty levied u/s 271(1)(c) amounting to Rs. 5,63,980/- is not tenable and hence the same is deleted. As regards penalty imposed on disallowance of business promotion expenses, the assessee himself has

not disclosed the details of the said expenses despite the specific questionnaire put up to the assessee by the assessing officer at the time of assessment proceedings. There is a clear statement made by the assessee during the assessment proceedings as well as before the CIT(A) that because of the business exigencies the assessee cannot reveal the name whom the assessee has gifted the amount. It is pertinent to note that the assessee admitted that the amounts were gifts and details of the same cannot be disclosed. This established that the assessee during the course of the assessment proceedings filed/furnished inaccurate particulars of income. This is a clear case of filing inaccurate particulars of income without giving any details despite specifically asked by the revenue authorities. Hence, in this respect penalty u/s 271(1)(c) is sustained by us. Hence, appeal of the assessee is partly allowed.

7. In result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 07<sup>th</sup> day of August, 2019.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 07.08.2019

*\* Amit Kumar\**

Copy forwarded to:

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

ASSISTANT 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 fair order is placed 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	
Date of dispatch of the Order	