

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri R.K. Panda, Accountant Member And  
Ms. Suchitra Kamble, Judicial Member**

**ITA No. 126/Del/2017  
Assessment Year: 2010-11**

Cushman & Wakefield Property Management Services India Pvt. Ltd., B-6/8, Commercial Complex, Opposite Deer Park, Safdarjung Enclave, New Delhi. (PAN-AACCC3657N) <b>(Appellant)</b>	<b>vs.</b>	DCIT, Circle 6(2), New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Shruti Khimta, AR
<b>Respondent by</b>	Ms. Ashima Neb, Sr. DR

<b>Date of Hearing</b>	20.08.2019
<b>Date of Pronouncement</b>	21.08.2019

**ORDER**

**Per Suchitra Kamble, J.M.:**

This appeal is filed by the assessee against the order dated 07.10.2016 passed by the CIT(A)-35, New Delhi for the assessment year 2010-11.

2. The grounds of appeal are as under :

*"1. That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) - 35 ('Ld. CIT(A)') erred in*

*confirming penalty of INR 4,92,973 under section 271(1)(c) of the Income Tax Act, 1961 ('Act') in impugned penalty order passed on March 24, 2015 by the Ld. Deputy Commissioner of Income Tax, Circle 6(2), New Delhi ('Ld. AO').*

*2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming penalty on the factually wrong finding that the issue of written off TDS had come to be unearthed during the assessment proceedings when the appellant filed revised return before the Ld. AO.*

*3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) while confirming the penalty has ignored the fact that the Company has suo-moto revised its Return of Income ('ROI') on March 31, 2012 inter-alia claiming the amount of TDS recoverable written off of INR 14,50,350.*

*4. That the Ld. CIT(A) has erred in law in confirming penalty for filling of inaccurate particulars of income under section 271(1)(c) of the Act without appreciating that mere rejection of a claim does not tantamount to filing of inaccurate particulars of income.*

*5. That the Ld. CIT(A) has erred in law in confirming penalty without appreciating that denial of claim on account of TDS written off is merely based on bonafide difference of opinion on legal claim between the appellant and the assessing authority, and it does not tantamount to filling of inaccurate particulars of income under section 271(1)(c) of the Act.*

*6. That on facts and circumstances of the case and in law, the order of the Ld. CIT(A) is invalid and bad in law as it has been passed in contravention to specific provisions of section 275 (1)(a) of the Act and in complete disregard to the decision of the jurisdictional High Court in the*

*case of Commissioner of Income Tax Vs. Mohair Investment And Trading Co. P. Ltd. (245 CTR 312).*

*7. On the facts and circumstances of the case, the Ld CIT(A), erred in initiating the penalty proceedings under section 271(1)(c) of the Act.*

*That the above grounds of appeal are without prejudice to each other.*

*That the appellant reserves its right to add, alter, before or at the time of hearing of this appeal.”*

3. The assessee filed its return of income on 23.10.2010 declaring an income of Rs.3,50,70,596/-. The assessment was completed u/s. 143(3) on 29.11.2012 at an income of Rs.6,32,17,580/- after making additions on account of disallowance of written off TDS, income accrued but not due, service Tax Credit, expenses disallowed and bad debt amounting to Rs.14,50,350/-, Rs.70,20,855/-, Rs.1,96,68,644/-, Rs.47,69,380/- and Rs.13,80,231/- respectively. Simultaneously, penalty proceedings u/s. 271(1)(c) were initiated for concealing/furnishing inaccurate particulars of income. Aggrieved by the assessment order, the assessee filed appeal before the CIT(A), where the assessment order was confirmed on account of disallowance of written off TDS. Before the CIT(A), the assessee filed rectification application requesting to rectify the assessment order passed by the Assessing Officer. The assessee's contention was found to be correct and the order u/s. 154 of the Act was passed on 06.06.2013, deleting the addition made on account of income accrued but not due of Rs.70,20,855/- and disallowance of expenses of Rs.47,69,380/-. Since these additions were treated as concealed income and inaccurate particulars of income of the assessee, show cause notice u/s.

271(1)(c) of the Act read with section 274 dated 29.11.2012 was issued and served upon the assessee company. The assessee filed reply to the notice. After considering the reply, the Assessing Officer held that the assessee has not furnished accurate particulars of its income to the extent of Rs.14,50,350/- and hence, imposed penalty of Rs.4,92,973/-.

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

5. The Id. AR submitted that the quantum appeal on the grounds of assessee's claim regarding allowance of written off TDS of Rs.14,50,350/- has been allowed by the Tribunal in ITA No. 185/Del/2014 A.Y. 2010-11, order dated 11.07.2017. Therefore, the Id. AR submitted that the very basis of penalty does not survive. Therefore, penalty appeal be allowed.

6. The Id. DR relied upon the order of the CIT(A) and the penalty order as well as the assessment order.

7. We have heard both the parties and perused the relevant material available on record. It is pertinent to note that the quantum appeal has been allowed by the Tribunal. Thus, the addition, on which penalty has been imposed by the Revenue does not survive. Therefore, present penalty appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 21<sup>st</sup> August, 2019.**

Sd/-

**(R.K. Panda)**  
**Accountant Member**

Sd/-

**(Suchitra Kamble)**  
**Judicial member**

Dated: 21<sup>st</sup> August, 2019

*\*aks\**

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*