

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.57/Del./2017, A.Y. 2007-08

Spectris Technologies Pvt. Ltd.	Vs.	DCIT
Unit No. P701-705, 7 th Floor,		Circle-9(1)
Block C, JMD Megapolis,		
Sohna Road,		New Delhi
Sector-48, Gurgaon		
PAN : AAGCS6654R		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Sh. Anmol Singh, CA
REVENUE BY : Shri S.S.Rana, CIT(DR)

Date of Hearing : 27.11.2019
Date of Order : 29 .11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Spectris Technologies Pvt. Ltd., Gurgaon (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 14/10/2016 passed by Ld. Commissioner of Income Tax(Appeals)-38, New Delhi qua the Assessment Year 2007-08 on the grounds inter alia that :

1. *“That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income-tax (Appeals)-38 New Delhi (“Ld. CIT(A)”) is bad in law and void ab initio.*

2. *That on facts and circumstances of the case and in law the Ld. CIT(A) erred in upholding the levy of penalty of Rs. 55,83,858 without granting adequate opportunity of being heard.*

3. *That the Ld. CIT(A) failed to acknowledge that the appellant had availed of the services of tax-consultant (“consultant”) in making representation before the Ld. CIT(A). The said consultant appeared before the Ld. CIT(A) and sought adjournments. The appellant was not even aware that the consultant had not appeared before the Ld. CIT(A) on due date of hearing which lead to ex-parte adjudication of the case.*

4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the levy of penalty u/s 271(l)(c) of the act on the addition of Rs. 1,80,70,738 on account of Transfer Pricing adjustments made in the assessment order u/s 143(3) dated 03-02-2011 without appreciating that the said addition is contrary to law and facts.*

5. *The Ld. CIT(A) erred on facts and in law in upholding the levy of penalty without appreciating that the international transactions in respect of which penalty has been levied on the appellant were carried out by the appellant in good faith and after exercising due diligence. The element of mens rea which is a sine qua non for levying penalty for concealment of income is absence in the present case.*

6. *That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the levy penalty of Rs. 55,83,858 without appreciating that the arm’s length margin of the subject international transactions was determined by a qualified expert and therefore the allegation that the appellant had furnished inaccurate particulars is not correct and hence no penalty is warranted in the present case.*

7. *That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and in facts in upholding levy of penalty of Rs. 55,83,858 without appreciating that the Ld. Assessing Officer had not recorded mandatory “satisfaction⁴⁴ as per law.*

8. *That having regard to the facts and circumstances of the case, the upholding of levy of penalty of Rs. 55,83,858 is contrary to the principles of natural justice.*

That the above grounds are independent and without prejudice to each other.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of proceedings in the interest of the natural justice.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee is into the business of marketing installation and after sales support services of X-ray Analytical Equipments and Accessories and Trading in related Spare Parts. On the basis of assessment framed u/s 143(3) read with section 144(c) by making addition of Rs. 1,80,70,738/- on account of transfer pricing adjustment for international transactions, penalty proceedings have been initiated u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Assessing Officer levied penalty to the tune of Rs. 55,83,858/- @ 100% of the tax evaded for furnishing inaccurate particulars of income ex parte.

3. Assessee carried the matter before Ld. CIT(A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. DR, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Bare perusal of the impugned order passed by Ld. CIT(A) goes to prove that appeal has been decided by Ld. CIT(A) ex parte on failure of the assessee to appear after seeking adjournment on

29.03.2016. However, keeping in view the facts and circumstances of the case that the penalty has been levied in this case on the basis of addition made on account of transfer pricing adjustment which is based upon transfer pricing analysis of the taxpayer, which may differ from the transfer pricing analysis of Transfer Pricing Officer, assessee is entitled for opportunity of bearing heard. Both the Authorised Representative of parties to the appeal have also agreed to the proposition that the issue be set aside to Ld. CIT(A) to decide afresh in the interest of justice.

6. Since the appeal has been decided by Ld. CIT(A) ex parte without hearing the assessee, we are of the considered view that the matter is required to be set aside, to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee . Consequently, appeal filed by the assessee is hereby allowed for statistical purpose.

Order pronounced in open court on this 29th November, 2019.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Dated : 29/11/ 2019

BR

Sd/-
(KULDIP SINGH)
JUDICIALMEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)-38, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	28.11.2019
Date on which the typed draft is placed before the dictating Member	29.11.2019
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	