

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITANo. 3291/Del/2017  
Assessment Year: 2007-08**

**Prem Casting (P) Ltd.,  
(Now known as Trimurti ConcastPvt. Ltd.,  
Meerut Road, Muzaffarnagar.**

**vs. ACIT, Circle-2,  
Muzaffarnagar**

**PAN AACCP3753E**

(Appellant)

(Respondent)

Appellant by : None  
Respondent by: Sh. Surender Pal, Sr. Dr.

Date of hearing: 27/11/2019

Date of order : 31/12/2019

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 15/3/2017 in appeal No. 95/15-16/MZR passed by the learned Commissioner of Income Tax (Appeals), Muzaffarnagar ("Ld. CIT(A)"), for the assessment year 2007-08, confirming the penalty under section 271(1)( c ) of the Income Tax Act, 1961 (for short "the Act") M/s Prem Castings (P) Ltd (M/s Trimurti Concast private limited) ("the assessee") preferred this appeal.

2. Brief facts of the case are that the assessee is in the business of manufacturing of iron and steel. For the assessment year 2007-08 it had filed its return of income on 31/10/2007 declaring book profit of Rs.21,77,195/- on which the assessee had paid tax as per the provisions under section 115JB of the Act. Assessment under section 143(3) of the Act was complete by order dated 24/12/2009 by making addition of Rs.17,238/- on account of late payment of employees' contribution to ESIC, and Rs. 3.46 crores on account of unexplained share application money under section 68 of the Act and allowing set off of brought forward losses to the tune of Rs.90,90,248/- as against Rs.1,10,99,562/- as claimed by the assessee.

3. Aggrieved by such an addition, assessee carried the matter in appeal before the Ld. CIT(A) and the Ld. CIT(A) vide order dated 17/3/2011 deleted the addition of Rs. 3.46 crores on account of unexplained share application money and directed set off of losses claimed by the assessee at Rs.1,10,99,562/-. Revenue challenged the deletion of Rs. 3.46 crores added by the learned Assessing Officer on account of unexplained shared application money before the Tribunal and the Tribunal by order dated 11/9/2015 upheld the addition and reversed the order of the Ld. CIT(A).

4. Penalty proceedings under section 271(1)( c ) of the Act were initiated and concluded by order dated 29/3/2016 with the levy of penalty of Rs.77,09,061/- . Assessee filed appeal before Ld. CIT(A) but never appeared before such a forum. Having granted sufficient opportunity to the assessee, Ld. CIT(A) recorded that the assessee has no interest in pursuing the appeal and, therefore, he disposed of the appeal

on the basis of material available on record. Ld. CIT(A) discussed the facts of the case and found that nothing was brought on record before the Id. Assessing Officer or during the appellate proceedings against the levy of penalty, to establish the identity of the share applicants by furnishing evidence of their existence at the address given and not even a single applicant was produced before the Assessing Officer, in spite of granting of sufficient time. Ld. CIT(A), therefore, held that the assessee failed to discharge onus cast on it and therefore was guilty of furnishing of inaccurate particulars of income in the return of income. Consequently Ld. CIT(A) confirmed the penalty and dismissed the appeal.

5. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned with the endorsement of the postal servant that the addressee left. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are the considered opinion that there is no point in sending the notice to the very same address time and again. At the same time, no new address of the assessee is available with the Tribunal or with the Department. Basing on the record we, therefore, proceed to hear the counsel for Revenue and decide the matter on merits.

6. It is the submission of the Ld. DR that the fact-finding written by the learned Assessing Officer was restored by the Tribunal and till today there is no material on record to show that the findings of the Tribunal are disturbed. There is no material before us to come to a different conclusion or to say that the levy of penalty in this matter cannot be sustained. It is for the assessee to establish that the penalty order is bad under law. In the circumstances we find no reason to deviate the view taken by the authorities below. Consequently, we uphold the levy of penalty and find the grounds of appeal as devoid of merits.

7. In the result, appeal of the assessee is dismissed.

Pronounced in open court on this the 31st December, 2019.

Sd/-  
**(G.S. PANNU)**  
VICE PRESIDENT

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated:31 /12/2019  
'aks'

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI