

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

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

**I.T.A. No. 91/DEL/2014 (A.Y - 2011-12)**

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| DCIT(International Taxation)<br>Circle – 3(1),<br>New Delhi | Vs | M/s. J. P. Kenny Pty. Ltd.<br>India Project Office, Level-4<br>Incube Business Centre,<br>17-18, Nehru Place,<br>New Delhi-110 019.<br>(PAN : AABCJ 3994 L) |
| <b>(APPELLANT)</b>  |    | <b>(RESPONDENT)</b>   |

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| <b>Appellant by</b>  | <b>Shri Satpal Gulati, CIT-D.R.</b> |
| <b>Respondent by</b> | <b>Shri Nageshwar Rao, Adv.</b>     |

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| <b>Date of Hearing</b>       | <b>06.01.2020</b> |
| <b>Date of Pronouncement</b> | <b>13.01.2020</b> |

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-XXIX, New Delhi dated 03.10.2013 under section 271(1)(c) of the Income Tax Act, 1961 for Assessment Year 2009-10.

2. The Grounds of appeal are as under:-

- “1. On the facts and in the circumstances of the case and law the holding of LdCIT(A) that none of the pre-conditions of section 271(1)(c) and Explanation 1 to section 271(1)(c) of the Income Tax Act are satisfied is incorrect, as the explanation offered by the assessee was found to be false and had not been accepted by the Learned AO on merits during the assessment as well as penalty proceedings and the Learned CIT(A) has ignored this fact while deciding the appeal in

*favour of the assessee.*

2. *On the facts and in the circumstances of the case and law the Ld CIT(A) has grossly erred in neglecting the fact that the A.O has established in the assessment as well as penalty order about non-existence of PE of the assessee and the fact brought out and established by the A.O has never been disputed by the assessee. The Ld. CIT(A) has ignored and not discussed this fact finding recorded by the A.O on merits in the appellate order.*
3. *The appellant craves to add, modify, amend or alter any grounds of appeal at the time or before the hearing of the appeal.”*

3. The assessee is a company registered under the laws of Australia and is a non resident under the Act. It is engaged in the business of providing a range of engineering and project management services to the oil and gas agencies worldwide. The assessee has executed three projects in India during the year under consideration. These projects are for providing project management consultancy services to GAIL (India) Ltd. for laying of cross-country natural gas pipelines in India. The whole of the services under these projects are provided in India at GAIL's premises and at its site locations. The whole of the work has been executed through a sub-contractor, Wood Group Kenny India Pvt. Ltd. The revenues under the projects accrued in Australia Dollars and Indian Rupees as per milestones achieved during the year. The revenue's in Indian Rupees are received in project office's bank accounts maintained with SBI, New Delhi. The assessee filed return of income filed on 29.09.2019 declaring a loss of Rs.21,40,721/. In the return of income, the whole of the Revenues accrued during the year under these projects have been offered to tax on net income basis after taking a position that there exists a PE in India and services rendered are effectively connected with the PE. The Assessing Officer, however, brought the contract revenues to tax on gross basis by holding that the assessee does not have a PE in India and the Revenue's in nature of fee for FTS should be brought to tax on gross basis at 10%. The Assessing Officer also taxed other income reported in profit and loss Account which includes excess provisions written off, exchange gain and reimbursement of expenses on gross

basis at 40%. The Assessee did not prefer an appeal under the quantum proceedings. The Assessing Officer thereafter proceeded ahead with penalty proceedings and levied penalty at 250% amounting to Rs.97,34,605/-. The assessee filed a rectification application u/s 154 of the Act requesting the Assessing Officer to execute the other income from taxable income of the assessee. The Assessing Officer vide its rectification order dated 25.02.2013 partially agreed to assessee's request and rectified the assessment order by reducing tax rate on other income from 40% to 10%. Consequent to rectification, the Assessing Officer also rectified the penalty demand vide order dated 28.02.2013 wherein revised penalty demand of Rs.67,21,922/- which determined.

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

5. The Ld. DR submitted that CIT(A) was not agreed in holding that none of the PE conditions of Section 271(1)(c) and Explanation – 1 to Section 271(1)(c) has been specified. The Ld. DR further submitted that the Assessing Officer established in the Assessment order about non-existence of PE of the assessee and the same was not disputed by the assessee. Thus, the Ld. DR submitted that the penalty order passed by the Assessing Officer is just and proper.

6. The Ld. AR submitted that the CIT(A) has rightly deleted the penalty in light of the decision of the Hon'ble Supreme Court in case of Reliance Petro Products (Pvt.) Ltd. (2010) 230 CTR 320. The Ld. AR further submitted that there is no concealment of particulars of income or furnishing of inaccurate particulars of income on part of the assessee. The issue of existence of PE does not amount to concealment of income or furnishing of inaccurate particulars. Therefore, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. The issue of penalty u/s 271(1)(c) is attracted when there is a concealment of income and/or furnishing inaccurate particulars of income in the present case in the original assessment order as well as subsequent assessment orders. There is no mention that the assessee filed inaccurate particulars of income. In fact, the penalty order has also not given as to which limb of 271(1)(c) has been deliberately invoked by the Assessing Officer. In fact, the penalty order has levied the penalty on both the counts i.e. concealment of the income and furnishing inaccurate particulars of income but how these conditions have been dealt in the present assessee's case was not at all placed on record by the Revenue. The assessee has a fixed place PE or not is a matter of adjudication which according to the assessee was having PE and according to the Revenue was not having PE. The returns of income as well as the documentary evidence submitted before the Assessing officer reveals the stand taken by the assessee and it is a matter of adjudication to hold whether there is a PE or not in assessee's case. This cannot be held as concealment of income or furnishing inaccurate particulars. Therefore, Section 271(1)(c) is not at all attracted in assessee's case and therefore the order of the CIT(A) is just and proper. Therefore, appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on 13<sup>th</sup> day of January, 2020.**

Sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 13/01/2020  
*Priti Yadav, Sr. PS \**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

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| Date of dictation  | 07.01.2020 |
| Date on which the typed draft is placed before the dictating Member                  | 08.01.2020 |
| Date on which the typed draft is placed before the Other Member                      | 13.01.2020 |
| Date on which the approved draft comes to the Sr. PS/PS                              | 13.01.2020 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 13.01.2020 |
| Date on which the fair order comes back to the Sr. PS/PS                             | 13.01.2020 |
| Date on which the final order is uploaded on the website of ITAT                     | 13.01.2020 |
| Date on which the file goes to the Bench Clerk                                       | 13.01.2020 |
| Date on which the file goes to the Head Clerk  |            |