

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.:- 6422/Del/2017
Assessment Year: 2004-05

Chunnu International C-55/4, Okhla Industrial Area, Phase-II, New Delhi. PAN AACFC1559L	Vs.	ACIT, Circle – 28(1) New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ravi Gupta, CA
Department by:	Shri Jagdish Singh, Sr. DR
Date of Hearing	20/02/2020
Date of pronouncement	/02/2020

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal has been filed by the assessee against aforesaid impugned appellate order dated 27.7.2017 passed by Learned Commissioner of Income-Tax (Appeals) 10, New Delhi, [in short, "Ld. CIT(A)"] pertaining to Assessment Year 2004-05. The assessee has

raised following grounds of appeal :-

- "1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] confirming the penalty of Rs. 4,35,181/-levied under section 271(1)(c) by the AO, is bad both in the eye of law and on facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty under section 271(1)(c) amounting to Rs. 4,35,181/-levied by the AO on account of deduction claimed u/s 80HHC & disallowance of ESI/EPF deposited after the due date.*
- 3. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the penalty despite the fact that there is neither concealment nor furnishing of inaccurate particulars of income.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has grossly unjustified, illegal & arbitrary in imposing penalty U/S 271(1)(c) of Income Tax Act, 1961 stating that Assessee has deliberately filed inaccurate particulars of Income.*
- 5. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming penalty under section 271 (1)(c) as no finding has been given on merit regarding concealment in the order passed by the AO.*
- 6. On the facts and circumstances of the case, the learned CIT(A) has erred in ignoring the fact that penalty proceedings are independent proceedings and as such mere addition made in assessment does not tantamount to concealment of income or furnishing of inaccurate particulars.*
- 7. The appellant craves leave to add, amend or alter any of the grounds of appeal."*

2. Ld. CIT(A) confirmed penalty amounting to Rs. 4,35,181/- u/s 271(1)(c) of the Income Tax Act levied by the AO vide order dated 13.8.2016. The penalty was levied by the AO in respect of additions totalling Rs. 12,13,046/- made in assessment order dated 27.12.2006 u/s 143(3) of the Income Tax Act. The aforesaid amount of Rs. 12,13,046/- included Rs. 11,74,666/- on account of disallowance of assessee's claim u/s 80HHC of the Income Tact Act and Rs. 38,380/- on account of disallowance of employee's contribution to PF and ESI deposited after the due date.

3. In the course of appellate proceedings in Income Tax Appellate Tribunal i.e. ITAT, the paper book containing the following particulars were filed from the assessee's side :

1. BRIEF HISTORY

1.1 Chronology of Events]

1.2 Case Laws

CIT vs. Madhushree Gupta (2013) 33 taxmann.com 286 (Delhi)

CIT vs. Reliance Petroproducts (P.) Ltd. (2010) 189 Taxman 322 (SC)

ACIT vs. Cellcap Invofin India (P.) Ltd. (2016) 68 taxmann.com 395 (Delhi-Trib)

2. COPY OF ORDER ISSUED BY CIT (APPEALS)

3. COPY OF ORDER ISSUED BY ASSESSING OFFICER

4. At the time of hearing before us, the Ld. AR of the assessee placed reliance on the contents of the aforesaid paper book. Further he submitted that there was no suppression of any material facts by the assessee either in the return of income or during the course of assessment proceedings before the AO. He further submitted that the issues on which the aforesaid additions totalling Rs. 12,13,046/- were made by the AO are highly debatable and disputable in nature on which two different views can legitimately exist. He further submitted that merely because claim has been made by the assessee which is not accepted by the Revenue authorities does not mean that there were concealment of income or furnishing of inaccurate particulars of income. Ld. Sr. DR relied on the impugned appellate order dated 27.7.2017 of the Ld. CIT(A) and the aforesaid order dated 27.12.2006 of the AO whereby penalty was levied u/s 271(1)(c) of the Income Tax Act. However, he agreed that there was no suppression of any material facts from the assessee's side either in return of income or during the assessment proceedings before the AO. He also agreed that the issues on which the aforesaid additions totalling Rs. 12,13,046/- were made

by the AO are highly disputable in nature on which two different views can legitimately exist. He also did not bring anything to our attention to show that there was any concealment of material facts or furnishing of inaccurate particulars of income from the assessee's side either in return of income or during the assessment proceedings before the AO or during appellate proceedings.

5. We have heard both sides patiently. We have perused the materials on record carefully. We have also considered the judicial precedents referred in the records or brought to our attention at the time of hearing before us. It is not in dispute that the issues on which the aforesaid additions totalling Rs. 12,12,046/- were made by the AO are highly disputable issues on which two different views were legitimately possible. It is further not in dispute that there was full disclosure of material facts and circumstances by the assessee in the Return of income and during assessment proceedings. It is not the case of Revenue that any relevant information or fact was withheld by the assessee from the Revenue authorities in return of income or during assessment proceedings or during appellate proceedings before Ld. CIT(A). When there was full disclosure of material facts and circumstances by the assessee in the Return of Income and during

assessment proceedings; then, on the disputable issues of quantum addition, on which two different views are legitimately possible, of which the one favourable to the assessee has been adopted by the assessee; eventually, the Assessee may or may not succeed in the quantum proceedings and the disputable issue, on which two different views were possible, may eventually be decided against the Assessee in quantum proceedings. However, the assessee cannot be burdened with penalty u/s 271(1)(c) of I.T. Act, if on a disputable issue of quantum addition, on which two different views were legitimately possible, the Assessee decided to adopt the view which was favourable to the assessee; in a case in which all necessary details were filed by the Assessee in support of the claim and when no material inaccuracies were found in these details, and when the assessee is not guilty of suppression of any material facts. In quantum proceedings, when two different views are legitimately possible on a disputable claim made by the assessee; one of which is favourable to the assessee, the multiplicity of legitimate views and disputability of the claim has the effect of excluding the scope of penalty u/s 271(1)(c) of I.T. Act in respect of such disputable claim, even if the disputable claim is decided against the assessee in quantum proceedings; because in such a case the disputable claim made by the

assessee neither amounts to 'concealment of particulars of income' nor to 'furnishing of inaccurate particulars of income'. In view of the foregoing, we are of the view that this is not a fit case for penalty under section 271(1) (c) of the I.T. Act and we decline to interfere with the impugned appellate order dated 01.12.2016 of the Ld. CIT(A). For this view taken by us, we take support from Reliance Petroproducts (P) Ltd. 322 ITR 158 (SC); Devsons (P) Ltd. Vs. CIT 329 ITR 483 (Del.); Hindustan Coca Cola Marketing Company Pvt. Ltd. vs. DCIT (2019) 198 TTJ 0513 (Del.) and M/s. Padmini Infrastructure Developers India Ltd. vs. DCIT (2019) 55 CCH 0420 DelTrib. Moreover, as far as penalty levied on disallowance of assessee's claim u/s 80HHC of I.T. Act is concerned, the issue is also squarely covered in favour of the assessee by order of Hon'ble Delhi High Court in the case of CIT vs. Madhushree Gupta (2013) 33 taxmann.com 286 (Delhi) wherein Hon'ble Delhi High Court held that where Assessing Officer in course of quantum proceedings, disallowed a part of deduction claimed under section 80HHC, it could not serve as a valid ground for imposing penalty under section 271(1)(c). Further, as far as penalty levied in respect of aforesaid Rs. 38,380/- is concerned, the issue in dispute in this appeal is squarely covered in favour of the assessee by the ratio of the order of coordinate bench of

ITAT Delhi in the case of ACIT vs. Cellcap Invofin India (P.) Ltd. (2016) 68 taxmann.com 395 (Delhi – Trib.) in which it was held that where there was difference of opinion between assessee and department on applicability of rule 8D, penalty under section 271(1)(c) was not leviable. In view of the foregoing and respectfully following the aforesaid precedents, we are of the view that this is not a fit for levying of penalty u/s 271(1)(c) of the Income Tax Act. Accordingly, we set aside the impugned appellate order dated 27.7.2017 of the Ld. CIT(A) and cancel the penalty amounting to Rs. 4,35,181/- levied by Assessing Officer u/s 271(1)(c) of the Income Tax Act. The AO is directed to delete the aforesaid penalty amounting to Rs.4,35,181/-.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20/02/2020.

sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20th February, 2020

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Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI