

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6416/Del/2015 : Asstt. Year : 2008-09

ACIT, Cir.2, Cir.1 (i/C)- LTU, NBCC Plaza Pushp Vihar, New Delhi-110017	Vs	M/s. Havells India Ltd. 1/7, Ram Kishore Road, Delhi-110054
(APPELLANT)		(RESPONDENT)
PAN No. AAACH0351E		

Assessee by : Sh. Rohit Jain, CA

Revenue by : Sh. Gaurav Dudeja, Sr. DR

Date of Hearing: 11.11.2020

Date of Pronouncement: 18 .11.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-22, New Delhi dated 08.09.2015.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in reducing the penalty u/s 271(1)(c) of the I.T, Act, 1961 to Rs.1,35,900/- as against penalty of Rs. 3,86,00,000/- imposed by the AO.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in reducing the penalty u/s 271(1)(c) of the I.T.Act, 1961 to Rs. 1,35,900/- as against penalty of Rs.

3,86,00,000/- imposed by the AO on the ground that some of the additions made were of debatable nature ignoring the fact that the assessee had not provided any evidence in support of its explanation.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in reducing the penalty u/s 271(1)(c) of the I.T. Act, 1961 to Rs.1,35,900/- as against penalty of Rs. 3,86,00,000/- imposed by the AO ignoring the fact that in view of Explanation 1 to section 271(1) of the I.T. Act, 1961 the onus is on the assessee to show by cogent and reliable evidence that there was no concealment of income and which the assessee has failed to do.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in reducing the penalty u/s 271(1)(c) of the I.T. Act, 1961 to Rs.1,35,900/- as against penalty of Rs. 3,86,00,000/- imposed by the AO on the ground that some of the additions made were of legal nature ignoring the fact that the assessee had not provided any evidence in support of its explanation that wrong application of law by it was bona-fide.

5. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in reducing the penalty u/s 271(1)(c) of the I.T. Act, 1961 to Rs.1,35,900/- as against penalty of Rs. 3,86,00,000/- imposed by the AO ignoring the ratio of decision of the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. vs. CIT (2013) 358 ITR 593 (SC) wherein it has been held that even voluntary disclosure does not release the assessee from the mischief of penal proceedings.

6. The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing."

2. In this case, penalty u/s 271(1)(c) has been levied on the additions made by the Assessing Officer under various heads viz. disallowance u/s 40(a)(ia), disallowance of provision for sales incentives, disallowance of claim of deduction u/s 80IC, disallowance of exchange loss and addition made in respect of foreign exchange gains.

3. At the very outset, it was brought to our notice that the quantum additions made by the AO stands deleted by the order of the tribunal dated 10.11.2020 and hence, the penalty does not survive.

4. The facts have not been disputed by the Ld. DR. Since all the quantum additions stands deleted, we hereby hold that the penalty levied u/s 271(1)(c) do not survive at this juncture.

4. The appeal filed by the revenue is allowed.

Order Pronounced in the Open Court on 18/11/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: /11/2020

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Copy forwarded to:
1. Appellant

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Dictated by Member	18 .11.2020		PS
2.	Draft placed before author	18.11.2020		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Date of uploading			