

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
VIRTUAL COURT HEARING**

(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri S.S. Godara, Hon'ble Judicial Member)

ITA No. 2424/Kol/2019
Assessment Year: 2015-16

M/s. Shree Magnets Pvt. Ltd.....Appellant
81, Sodepur Barasat Road
Muragacha
Post - Jugberia
Kolkata - 700 110
[PAN : AAGCS 8120 C]

Vs.

Income Tax Officer, Ward-5(1), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, A/R, appeared on behalf of the assessee.

Shri Dhruvajyoti Ray, JCIT, D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : October 30th, 2020

Date of pronouncing the order : November 25th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-2, Kolkata, (hereinafter the "Id. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 11/09/2019, for the Assessment Year 2015-16.

2. The assessee in this case is a company and filed its return of income for the Assessment Year 2015-16, declaring Nil income on 30/09/2015. Later it filed a revised return of income on 11/11/2015 declaring total income of Rs.93,390/-. The assessee claims that it had declared income u/s 115JB of the Act of Rs.37,54,094/-. The tax under MAT for the Assessment Year 2015-16, is stated to have been declared at Rs.7,15,343/-. These aspects are not reflected by the Assessing Officer in his order. Instead, the Assessing Officer assessed the income under the normal provision of the Act at Rs.13,35,950/-, by holding that, the assessee declared higher income of Rs.12,42,560/-, during the course of scrutiny. He did mention at para 5 of his order that MAT credits is decreased due to this fact by Rs.3,83,951/-. In other words, the MAT credit claimed by the assessee of Rs.3,02,534/- is not recognised. Penalty u/s 271(1)(c) of the Act was initiated. Later penalty u/s 271(1)(c) of the Act was levied on the assessee vide order dt. 29/03/2018. In this order, the assessee was penalised for concealment of income. The reason for the increase in income under normal provisions was as follows:-

The assessee is into the business of manufacturing of electromagnets and is also an approved in-house R&D unit by DSIR, Govt. of India and eligible for deduction u/s 35(2AB) of the Act. The first time approval was granted on 30/06/2014. While filing its return of income, the assessee had claimed deduction for the entire 12 months by mistake. However, during the course of assessment, while preparing the documents, it had dawned that the deduction should be restricted to 9 months from 30/06/2014 and not the entire year. The assessee had suo moto, before being detected by the Assessing Officer, had asked the Assessing Officer to restrict the deduction u/s 35(2AB) of the Act to 9 months. The order was passed accordingly and has been accepted by the assessee. However, later the Assessing Officer imposed penalty on the assessee for an inadvertent mistake which has been pointed out by the assessee and has been accepted.

2.1 Aggrieved the assessee carried the matter in appeal before the Id. First Appellate Authority. The Id. CIT(A) confirmed the penalty.

3. Further aggrieved, the assessee is in appeal before us.

4. The Id. Counsel for the assessee, Mr. Sunil Surana, submitted that, the levy of penalty u/s 271(1)(c) of the Act, is bad in law for the reason that:-

a) Penalty proceedings have been initiated on the charge that the assessee furnished inaccurate numbers but ultimately has been levied on the ground that the assessee has concealed particulars of income. He submitted that such change of charge makes the levy of penalty bad in law. For this proposition, he relied on the following decisions:-

- *Ramesh Prasad Sao vs. DCIT in ITA No. 997/Kol/2011; Assessment Year 2007-08, order dt. 03/02/2016.*
- *CIT v. Manjunatha Cotton & Ginning factory [2013] 359 ITR 565*

b) The book profits returned by the assessee and assessed by the Assessing Officer are the same and when there is no addition/disallowance or variation to the returned income of the book profits, just because certain additions/disallowances are made to the income under the normal provisions of the Act, no penalty can be levied u/s 271(1)(c) of the Act. For this proposition reliance was placed on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Nalwa Sons Investments Limited reported in 327 ITR 543* and the decision

of the Jurisdictional Tribunal in the case of *DCIT vs. Salasar Stock Broking Limited* in ITA No. 2220/Kol/2013; Assessment Year 2005-06, order dt. 19/04/2016.

c) On facts, the variation in income was due to the deduction claimed u/s 35(2AB) of the Act for the full 12 months instead of 9 months as the approval from the competent authority was granted on 30/06/2014 and that this was a debatable issue. It was submitted that the assessee had reasonable cause in making the claim which was approved by the competent authority.

4.1. The ld. D/R, on the other hand, opposed the contentions of the assessee and submitted that, the notice/s 274/271(1)(c) of the Act, have not been filed by the assessee and hence the claim that charge has not been specified in such notice cannot be entertained. He relied on the order of the Assessing Officer as well as the ld. CIT(A) and submitted that the assessee has failed to appear before the Assessing Officer and submitted an explanation that it was due to scrutiny that the assessee came forward and disclosed additional income and hence the levy of penalty u/s 271(1)(c) of the Act, is bad in law.

5. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

6. The ld. D/R has not disputed the fact that the book profits returned by the assessee u/s 115JB of the Act, as been accepted by the Assessing Officer. In other words, no addition or disallowance was made by the Assessing Officer to the book profits, computed and disclosed by the assessee u/s 115JB of the Act. The assessee in this year has been assessed u/s 115JB of the Act for profits only and not on profits and gains under the normal provisions of the Act. Under such circumstances, no penalty can be levied u/s 271(1)(c) of the Act, as held by the Hon'ble Delhi High Court in the case of *CIT vs. Nalwa Sons Investments Limited (supra)*. This Bench of the Tribunal in the case of *Salasar Stock Broking Limited (supra)* at para 4 held as follows:-

"4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the ld. CIT(Appeals) and reiterated before us, the income of the assessee for the year under consideration has finally been assessed on the basis of book profit under section 115JB and the ld. D.R. has not disputed this position. In the case of Nalwa Sons Investments Limited (supra) relied upon by the assessee, Hon'ble Delhi High Court has held that even though concealment is detected in the computation of income

as per the normal provisions of the Act, concealment penalty cannot be imposed when the ultimate tax liability of the assessee is determined on the basis of book profit under section 115JB. The ratio of this decision of the Hon'ble Delhi High Court in the case of Nalwa Sons Investments Limited thus is squarely applicable to the facts involved in the case of the assessee and we find no infirmity in the impugned order of the Id. CIT(Appeals) cancelling the penalty imposed by the Assessing Officer under section 271(1)(c) by relying on the said decision of the Hon'ble Delhi High Court. At the time of hearing before us, the Id. D.R. has not been able to bring to our notice any decision of the Hon'ble jurisdictional High Court or Hon'ble Supreme Court taking a different view than one taken by the Hon'ble Delhi High Court in the case of Nalwa Sons Investment Limited (supra). We, therefore, uphold the impugned order of the Id. CIT(Appeals) cancelling the penalty imposed by the Assessing Officer under section 271(1)(c) and dismiss this appeal of the Revenue.

7. Consistent with the view taken therein, we quash the penalty levied u/s 271(1)(c) of the Act, as the same is not sustainable in law.
8. In the result, appeal of the assessee is allowed.

Kolkata, the 25th day of November, 2020.

Sd/-
[S. S. Godara]
 Judicial Member

Dated : 25.11.2020
 {SC SPS}

Copy of the order forwarded to:

1. M/s. Shree Magnets Pvt. Ltd
81, Sodepur Barasat Road
Muragacha
Post - Jugberia
Kolkata - 700 110

2. Income Tax Officer, Ward-5(1), Kolkata

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

True copy
 By order

Assistant Registrar
 ITAT, Kolkata Benches