

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3879/DEL/2017  
[Assessment Year: 2006-07]

HLS Asia Ltd  
C - 2, Sector 17,  
Noida

Vs.

The D.C.I.T  
Circle- 12(1),  
New Delhi

PAN : AAACH 0627 H

[Appellant]

[Respondent]

Date of Hearing : 31.03.2021  
Date of Pronouncement : 31.03.2021

Appellant by : Shri Ankit Arora, CA

Revenue by : Shri Vipul Kashyap, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] -18, New Delhi dated 10.04.2017 pertaining to Assessment Year 2006-07.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty levied by the Assessing Officer u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. At the very outset, the ld. counsel for the assessee stated that the assessment has been framed pursuant to the directions of the PCIT u/s 263 of the Act and penalty u/s 271(1)(c) of the Act has been levied on the additions/disallowances made in such assessment order dated 28.03.2013. It is the say of the ld. counsel for the assessee that the order of the PCIT framed u/s 263 of the Act was challenged before the Tribunal and the Tribunal vide order dated 06.02.2020 in ITA No. 1712/DEL/2010 and Others have quashed the order of the PCIT framed u/s 263 of the Act. The ld. counsel for the assessee concluded by saying that since the very basis of the levy of penalty u/s 271(1)(c) of the Act has been removed, no penalty should be levied u/s 271(1)(c) of the Act.

4. The ld. DR fairly conceded to this.

5. We have given thoughtful consideration to the orders of the authorities below. It is true that the penalty order dated 27.09.2013 has been passed levying penalty u/s 271(1)(c) of the Act on the additions/disallowances made in the assessment order dated 28.03.2013. It is equally true that the assessment order dated 28.03.2013 was framed u/s 143(3)/263 of the Act.

6. We find that the order u/s 263 of the Act was challenged before this Tribunal and this Tribunal in ITA No. 1712/DEL/2010 & Others had quashed the said order. The relevant findings of the co-ordinate bench read as under:

"59. So far as question of assessment order being prejudicial to the interest of the Revenue as has been held by the Id. CIT is concerned, allowing additional depreciation which would otherwise have been available as normal depreciation does not lead to any prejudice to the Revenue as the assessee would only be entitled to 100% of the cost of the asset by way of additional depreciation plus normal depreciation or in the alternative as normal depreciation over the years.

60. Id. DR for the Revenue supported the order passed by the Id. CIT on the only ground that the assessee is not engaged in the ITA No.4144/Del./2014 ITA No.2208/Del./2014 ITA No.3708/ Del./2012 ITA No.5511/Del./2012 ITA No.323/Del./2012 ITA No.5855/Del./2011 ITA No.2241/Del./2014 manufacture of any article or thing, but this issue is no longer res integra as assessee in its own case held to be engaged in manufacture or production of an article or thing. Moreover, since the Id. CIT only modified the assessment directing the AO to withdraw the deduction for additional depreciation allowed u/s 32(1)(ia) but has not set aside the assessment to be framed afresh, Explanation 2 to [section 263](#) of the Act relied upon by the Id. DR for the Revenue is not attracted. So, we are of the considered view that arguments addressed by the Id. DR and his reliance on umpteen number of judgments is not applicable to the facts and circumstances of the case. Consequently, impugned orders passed by the Id. CIT u/s 263 of the Act both dated 31.10.2011 for AYs 2006-07 & 2007-08 are not sustainable in the eyes of law, hence ordered to be quashed."

7. Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation [assessment] has been removed, the super structure i.e. penalty must fall. Accordingly, the penalty is directed to be deleted.

8. In the result, the appeal filed by the assessee in ITA No. 4375/DEL/2017 is allowed.

The order is pronounced in the open court on 31.03.2021 in the presence of both the rival representatives.

Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)  
ACCOUNTANT MEMBER

Dated: 31<sup>st</sup> March, 2021.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	