

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos. 4753 & 4754/Del/2017
(for Assessment Years : 2006-07 & 2007-08)

DCIT Circle – 10(1) New Delhi PAN No. AACCG 0954 G (APPELLANT)	Vs.	M/s. Gee Ispat Pvt. Ltd., SU-217, Pitampura New Delhi. (RESPONDENT)
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Assessee by	--None--
Revenue by	Ms. Sunita Singh, CIT (DR)

Date of hearing:	08/07/2021
Date of Pronouncement:	08/07/2021

ORDER

PER BENCH:

Both the appeals filed by the Revenue are directed against the order dated 28.02.2017 passed by the Commissioner of Income Tax (Appeals)-25, Delhi relating to Assessment Years 2006-07 & 2007-08.

2. Before us, at the outset, Learned DR submitted that the issue involved in both the appeals are identical except for the year

and amounts involved. In view of the aforesaid submission of Learned DR, we proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2006-07.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is a company. AO has noted that action under section 132 of the Act was carried in the case of Gee Ispat Group of cases and accordingly a notice u/s 153A was issued on 08.11.2010 and in response to which assessee filed return of income on 08.12.2010 declaring Nil income. Thereafter the case was taken up for scrutiny and assessment was framed u/s 153A/143(3) of the Act vide order dated 29.12.2011 and the total income was determined at Rs.8,48,92,299/- by making additions of Rs.8,62,50,000/- on account of receipt of share application money and Rs.2,96,175/- on account of disallowance u/s 35D of the Act. On the aforesaid addition, the AO initiated penalty u/s 271(1)(c) of the Act and thereafter vide order dated 23.03.2016 levied the penalty of Rs.2,91,31,443/- u/s 271(1)(c) of the Act.

5. Aggrieved by the penalty order, assessee carried the matter before the CIT(A) who vide order dated 28.02.2017 in Appeal No.141/16-17 (Original) / 72/16-17 (New) deleted the penalty for

the reason that he noticed that the notice issued for penalty did not specify as to whether the penalty was levied u/s 271(1)(c) or 271(1)(b) of the Act. He also noted that the notice even did not specify as to whether the penalty was levied for concealment of income or for furnishing of inaccurate particulars of income. He therefore held that the notice to be a vague and without any specific charge, and even regarding the section that was invoked. He further noted that penalty was initiated for furnishing of inaccurate particulars of income as per Para – 3 of the penalty order but the penalty was imposed for concealment of income as per Para – 7 of the penalty order. He accordingly deleted the penalty. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds of appeal:

1. *“Whether the CIT(A) was correct in importing the fact that the assessee was assessed u/s 143(3) and no additions were made and therefore subsequent to the search operations and consequent order and additions u/s 143(3) r.w.s. 153A would not lead to penalty u/s 271(1)(c) in spite of the explicit provisions for the same.”*
2. *“Whether the CIT(A) was correct in ignoring the notice u/s 271(1)(c) r.w.s. 274 specifically mentioning that it appears that the assessee have concealed particulars of income or furnished inaccurate particulars of income in terms of explanation 1,2,3,4&5 and just relying on the para 3 of the order wherein it was mentioned that the assessee has concealed his income by furnishing inaccurate particulars of income which could be a merely a typo error or a statement unintended to water down the actual notice at all and thus ignoring the root notice and relying on a general statement of English in granting relief to the assessee and also ignoring the para 13 and 14 of the assessment order?.”*

3. *“Whether the CIT(A) was correct in importing explanation 1(A) to section 271(1)(c) in granting relief to the assessee by stating that the notice was issued for only inaccurate particulars of income (which is factually incorrect) and therefore explanation 1 cannot be applied, by completely ignoring the fact that the default on the part of the assessee to disclose facts material to computation of total income automatically results into a deeming provision of concealment for all income and the assessee’s default regarding production of material facts in the assessment order para 5 to 16 has been highlighted in detail.”*
4. *“Whether the CIT(A) was correct in holding that the notice was vague and without any clear charge inspite of the fact that the notice mentioned very clearly the same and the notice was consequent to the order passed u/s 153A r.w.s. 143(3) wherein specifically the initiation u/s 271(1)(c) has been mentioned against every addition and the notice was a consequence of such specific and clear finding.”*
5. *“Whether the CIT(A) was correct in granting relief on a typo error of the date of the subsequent notice during the course of penal proceedings, which granted further opportunity, when the attendance date was clearly mentioned and if any opportunity further had to be given then the case could have been remanded to the AO and which was surprisingly never exercised inspite of all defaults of the assessee.”*
6. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

6. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed. The case file further reveals that there was no appearance on behalf of the assessee even in the past. In such a situation, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing the DR.

7. Before us, Learned DR submitted that though various grounds have been raised by the Revenue but the solitary issue is deletion of penalty u/s 271(1)(c) by CIT(A). Before us, Learned DR supported the order of AO.

8. We have heard the Learned DR and perused the material on record. The issue in the present case is with respect to the deletion of levy of penalty by CIT(A). We find that CIT(A) while deleting the penalty has given a finding that the notice issued for levy of penalty had not specified the Section for which the penalty was levied as to whether it was u/s 271(1)(c) or 271(1)(b) of the Act. He has also given a finding that the notice issued was silent as to whether it was for concealment of particulars of income or was for furnishing inaccurate particulars of income. He has further given a finding that in the penalty order AO had initiated penalty for furnishing of inaccurate particulars of income but in the penalty order it was for concealment of income. Considering the aforesaid facts he held that the penalty imposed suffered from legal flaws and thus the imposition of penalty was untenable and thus deleted the penalty levied by AO.

9. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A). We therefore find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

10. As far as ITA No.4754/Del/2017 for A.Y. 2007-08 is concerned, before us, Learned DR has submitted that the issue is identical to that of A.Y. 2006-07. We find that the issue raised in the present appeal is identical to that of the A.Y. 2006-07 and CIT(A) has for the reasons similar to that for A.Y. 2006-07 deleted the penalty. In such a situation, we for the reasons stated hereinabove while dismissing the appeal of the Revenue for A.Y. 2006-07 and for similar reasons dismiss the appeal of Revenue for A.Y. 2007-08 also. **Thus appeal of Revenue is dismissed.**

11. **In the combined result, both the appeals of the Revenue are dismissed.**

Order pronounced in the open court on 08.07.2021

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 08.07.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI