

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No.1941/Del/2018
(Assessment Year: 2014-15)

Shri Kirti Mehta, C-4/129, 1 st Floor, Safdarjung Development Area, New Delhi-110 016. PAN: BHJPM5347K	Vs.	ACIT, Circle : 33 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	None;
Department by :	Shri Vivek Vardhan, Sr. D. R.;
Date of Hearing :	07/10/2021
Date of pronouncement :	11/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld. CIT (Appeals)-11, New Delhi, dated 18.01.2018 wherein the penalty of Rs.30,37,095/- levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) by the ld. ACIT, Circle 33 (1), New Delhi, by order dated 25.05.2017 is confirmed. The assessee is aggrieved by that order and has raised the following grounds of appeal:-

“1. That Ld. CIT(A) has grossly erred in law and facts in sustaining minimum penalty u/s 271(l)(c) of the Income Tax Act, 1961 amounting to Rs. 30,37,095/-

2. That Ld. CIT(A) has grossly erred in law and facts in sustaining minimum penalty of Rs. 30,37,095/- and an amount of Rs. 1,31,05,051/- being excess claim of 100 percent of deduction under section 80IC is restricted to 25 percent i.e. 32,76,263/- and Rs. 98,29,788/- is being disallowed and added back to the income of the assessee

3. That while imposing the penalty over the assessee, in the case of Price

Water Coopers Pvt Ltd vs. CIT (348ITR308), the AO has not observed the view of the supreme court where the SC has directed that no penalty u/s 271(l)(c) of the Income Tax Act, 1961 shall be levied if the assessee has committed an inadvertent and bona-fide error and has not intended to or attempted to either conceal its income or furnish inaccurate particulars.

4. Further, in Dilip N Shroff vs. JCIT, the Supreme Court has held that no penalty u/s 271(l)(c) of the Income Tax Act, 1961 can be imposed merely because additions have been made. AO must prove that there is concealment of income or the return of income furnished by the assessee or documents submitted during scrutiny proceedings is based on incorrect fact, falsity and untruth.

5. The Ld. CIT(A) has failed to appreciate the fact that the assessee has voluntarily disclosed all the income in the audit report and filed the return.

6. The appellant company craves to have the right to add, amend or modify the grounds of appeal. ”

2. Despite notice, none appeared on behalf of the assessee and, therefore, the issue is decided on the merits of the case. The notice sent by Speed Post has returned back showing that assessee has left the address mentioned in the appeal memo. The appeal is filed by the assessee and, therefore, service of the notice through the Revenue – respondent would not be proper. It is the duty of the assessee to give the change of address, if any. Thus, we proceed to decide this appeal on the merits.
3. Brief facts of the case shows that assessee filed return of income at Rs. 1,24,31,620/- and assessment under Section 143(3) of the Act was passed on 21.11.2016 at Rs. 1,22,60,410/-. The only addition was of Rs. 98,28,788/- being excess claim of deduction under Section 80IC of the Act. The assessee has claimed deduction as per audit report in Form 10CCB of the Act for a unit of the assessee located in Dehradun. The assessee was entitled to claim deduction under Section 80IC(2)(a)(iii) of the Act. The assessee was entitled for 100% of the profits as deduction for 5 assessment years and @ 25% of profit for the next 5 assessment years. The initial year was assessment year 2007-08. The impugned assessment year is 2014-15 which is 8th assessment year. Therefore, the assessee was eligible for deduction @ 25% of the profit. Assessee claimed deduction @ 100%. Therefore, the deduction was curtailed by Rs. 98,28,788/- and assessment order was passed.
4. Ld Assessing Officer initiated the penalty proceedings by issuing notice on 21.11.2016.
5. Assessee stated that during the course of assessment proceedings he came to know about this mistake and, therefore, he surrendered it with a condition that no

penalty under Section 271(1)(c) of the Act should be levied. Assessee also stated that he voluntarily declared all these incomes and even otherwise complete details were furnished and Form No. 10CCB certified by the auditor was submitted. Therefore, the penalty should not be levied.

6. The Id. Assessing Officer rejected the contentions of the assessee and held that the deduction was wrongly claimed at a higher amount and assessee was fully aware about that. Thereafter relying on several decisions, he held that the assessee has concealed income and has clear-cut intention to evade Income Tax. Therefore, he levied a penalty of Rs. 30,37,095/- by passing an order dated 25.05.2017 under Section 271(1)(c) of the Act.
7. Assessee aggrieved with that order preferred an appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) dismissed the appeal of the assessee as assessee did not appear before him. The Id. CIT (Appeals) also considered the issue on the merits by several judicial precedents but did not discuss the merits of the case and confirmed the penalty. Therefore, assessee is aggrieved and has preferred this appeal.
8. The Id. [CIT] – DR supported the orders of the lower authorities.
9. We have carefully considered the contentions of the Id. [CIT] – DR and also the orders of the lower authorities. Looking at para No. 4.2 of the order of the Id. CIT (Appeals) it is clear that the Assessing Officer has levied the penalty stating that assessee has concealed his income because of incorrect claim of expenses and has furnished inaccurate particulars of income. The Id. CIT (Appeals) thereafter following the decision of the Hon'ble Delhi High Court in CIT Vs. N.G. Technologies Ltd. 370 ITR , Zoom Communications Pvt. Ltd. 400 DTR 249 and of Delhi ITAT in Tera Constructions Pvt. Ltd. Vs. ITO in ITA. No. 1435/Del/2008 dated 19.03.2015 held that it is a fit case for levy of penalty and hence he confirmed it. We find that without considering the issues on the merits, the Id. CIT (Appeals) has merely relied upon the decisions without pointing out that how assessee has concealed his income or has furnished inaccurate particulars of income. Further merely relying upon the judicial precedents without showing that how the ratio laid down by Hon'ble courts are applicable to the facts of the case of the assessee is also not proper.
10. Even otherwise, the issue is decided without hearing the assessee. It is found that on the last date of hearing on 26.12.2017 at the request of the assessee the hearing was adjourned to 17.01.2018. Admittedly on that date, none appeared. However, the Id. CIT (Appeals) did not mention that who was the AR who sought an adjournment on 26.12.2017. Thus, in substance the Id. CIT (Appeals) has not

decided the issue on the merits of the case. Therefore, the issue needs to be set aside to the file of the Id. CIT (Appeals), to decide it on merits of the case.

11. We also find that there are different addresses of the assessee are mentioned in penalty order, CIT (Appeals)'s order and the appeal memo filed before us. The PAN number given by the assessee is BHJPM5347K.
12. Therefore, we also direct that the notice may be served by the Id. CIT (Appeals)'s office at the PAN address of the assessee. The Id. CIT (Appeals) may issue at least one notice to the assessee fixing the date of hearing and then decide the issue on the merits of the case as per information available on record or as submitted by the assessee.
13. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on : 11/11/2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 11/11/2021

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	11.11.2021
Date on which the typed draft is placed before the dictating member	11.11.2021
Date on which the typed draft is placed before the other member	11.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	11.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	11.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	11.11.2021
Date on which the final order is uploaded on the website	11.11.2021

of ITAT	
date on which the file goes to the Bench Clerk	11.11.2021
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	