

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 6408/Del/2017
(Assessment Year : 2008-09)

DCIT Circle – 16(2) New Delhi PAN No. AADCM 6414 C (APPELLANT)	Vs.	Mayar Health Resorts Pvt. Ltd., Plot –A, Basant Lok, Community Centre, Vasant Vihar, New Delhi-110057 (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Manu Chaurasiya, Sr. D.R.

Date of hearing:	02.11.2021
Date of Pronouncement:	17.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 28.07.2017 of the Commissioner of Income Tax (Appeals) – 38, Delhi relating to Assessment Year 2008-09.

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

3. Assessee is a company which is stated to be engaged in providing health care facilities and running a boutique and restaurant. Assessee filed its return of income for A.Y. 2008-09 on 30.09.2008 declaring loss of Rs.5,29,74,982/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act order dated 20.12.2010 and the total income was determined at Rs.83,70,190/- *inter alia* by making addition of Rs.2,10,06,489/-. On the aforesaid addition made, AO vide penalty order passed u/s 271(1)(c) of the Act dated 30.03.2014 levied penalty of Rs.76,39,824/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 28.07.2017 in Appeal No.17/2016-17 deleted the penalty. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting the penalty of Rs.76,39,824/- u/s 271(1)(c) of the Act imposed by the Assessing Officer by ignoring finding of facts recorded by the AO that the assessee had made patently wrong claim of expenses u/s 37(1) of the Act in respect of membership fees, preliminary exp written off as revenue expenditure?*
2. *Whether on facts and in circumstances of the case, the Ld., CIT(A) is legally justified in deleting penalty only on the ground that there was difference in opinion between the appellate authority with respect to a part of disallowance leading to penalty even when the assessee had failed to discharge its onus as stipulated in Explanation 1 to u/s 271(1)(c) of the Act?*
3. *Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in not upholding the penalty u/s 271(1)(c) of the Act imposed by the Assessing Officer by ignoring the fact that the assessee had taken a chance by making a patently incorrect and unsubstantially claim and*

the decision of Hon'ble Jurisdictional High Court in case of CIT vs Zoom Communication Pvt. Ltd. (2010) 327 ITR 510, CIT Vs. NG Technologies Limited (2015) 370 ITR 7, CIT Vs. Escorts Finance Ltd. (2010) 328 ITR 44 and CIT Vs. Harparshad and Company Ltd. (2010) 328 ITR 53?

4. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed. The case file reveals that on earlier occasion also there was no appearance on behalf of the assessee even though notice of hearing was issued to assessee. In such a situation, we proceed to dispose of the appeal *ex-parte* qua the assessee after hearing the Learned DR.

5. Before us, Learned DR supported the order of AO.

6. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the deletion of levy of penalty u/s 271(1)(c) of the Act. We find that while deleting the penalty u/s 271(1)(c) of the Act, CIT(A) has noted that the additions on which the impugned penalty was levied were debatable in nature and therefore disallowance did not fall under the limb of "concealment of particulars of income" nor under the limb of "furnishing of inaccurate particulars of income". She also relied on various decisions cited in the order to delete the penalty. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue.

In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.11.2021

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 17.11.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI