

**INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "B": NEW DELHI ]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 2810/Del/2019  
(Assessment Year: 2015-16)

M/s. C & C Construction Ltd., 74 – Hemkunt Colony, New Delhi – 110 048. <b>PAN: AAACC4543R</b>	Vs.	ACIT, Central Circle : 16, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Hitesh Kumar, Advocate;
Department by :	Shri Mrinal Kumar Das, Sr. D.R.;
Date of Hearing :	15/11/2021
Date of pronouncement :	15/11/2021

**ORDER**

**PER PRASHANT MAHARISHI, A.M. :**

1. This appeal is filed by the assessee – M/s. C & C Construction Ltd., for assessment year 2015-16 against the order of the Id. Commissioner of Income Tax (Appeals)–XXVI, New Delhi, dated 15.01.2019, raising the following grounds of appeal:-

“1. That on the facts and circumstances of the case and in law, the impugned order dated 15.01.2019 passed by the Ld. CIT (Appeals) levying penalty of Rs.1,61,20,206/- under section 271(1 )(c) of the Income-tax Act, 1961 (‘the Act’) on income enhanced during appellate proceedings, is without jurisdiction, bad in law and void-ab-initio.

1.1 That the Ld. CIT (Appeals) erred on facts and in law in passing the impugned penalty order without recording proper satisfaction, which is sine qua non for assumption of jurisdiction to impose penalty.

1.2 That the Ld. CIT (Appeals) erred in imposing the penalty on the grounds different from the grounds mentioned in the notice issued for the initiation of penalty proceedings and as such is illegal and bad in law.

1.3 That the Ld. CIT (Appeals) erred in passing the impugned penalty order in undue haste, without affording adequate opportunity of being heard to the appellant.

Without prejudice:

2. That the Ld. CIT (Appeals) erred on facts and in law in imposing penalty of Rs.1,61,20,206/- under section 271(l)(c) in respect of enhancement made to the income of the appellant amounting to Rs.4,96,84,717/- on account of expenses reimbursed by branch of the appellant company which has no effect on the computed profits of the appellant company for which there was neither any concealment nor furnishing of inaccurate particulars of any income. “

2. By this order the ld. CIT (Appeals) has dismissed the appeal of the assessee wherein penalty levied amounting to Rs. 1,61,20,206/- is under challenge and the ld. CIT (Appeals) dismissed the appeal.
3. At the time of hearing the assessee submitted a letter dated 12.11.2021 stating that the appellant – company is under-going the Corporate Insolvency Resolution Process under IBC, 2016 pursuant to the order dated 14.02.2019 passed by the NCLT, New Delhi. Mr. Navneet Kumar Gupta has been appointed as the Interim Resolution Professional. Therefore, the appeal must be kept in abeyance till the moratorium period.
4. The ld. DR submitted that this appeal is filed by the Director of the company, who does not have any locus standi for filing this appeal and it should be filed by the Interim Resolution Professional, hence the same is not maintainable.
5. We have carefully considered the rival contentions and find that in terms of Notification dated 18<sup>th</sup> August, 2021, the prescribed person for filing any appeal shall be the Interim Resolution Professional. In the present case the appeal is filed by the Director of the company. In view of this, we are of the view that this appeal is not maintainable, hence, we dismiss the same. However, we grant liberty to the Interim Resolution Professional to file this appeal afresh if the Committee of Creditors so directs him.
6. Accordingly, the appeal of the assessee is dismissed.

Order pronounced in the open court on : 15/11/2021.

-Sd/-  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

-Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated : 15/11/2021

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent;
3. CIT

4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi