

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
A N D
SHRI AMIT SHUKLA, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 6542/Del/2018
(Assessment Year: 2004-05)

TV Today Network Ltd., F – 26, First Floor, Connaught Circus, New Delhi – 110 001. PAN: AABCT0424B	Vs.	Addl. CIT, Special Range : 9, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Shailesh Gupta, Adv.;
Department by :	Shri Umesh Takyar, Sr. DR;
Date of Hearing :	13/12/2021
Date of pronouncement :	13/12/2021

ORDER

PER AMIT SHUKLA, J. M.

1. The aforesaid appeal has been filed by the assessee against the impugned order dated 27.07.2018 passed by the Commissioner of Income Tax (Appeals)-15, New Delhi, in relation to the penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) for assessment year 2004-05.
2. The grounds of appeal raised by the assessee are as under:-

“1. The Ld Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the appeal of assessee - appellant by stating that “no compliance was made, against notice dated 14.05.2018 for fixing the date of hearing on

23.05.2018” whereas, the assessee had already filed its reply for seeking adjournment on 22.05.2018 and as such, the appeal has wrongly been dismissed ex - parte by learned CIT (A).

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was neither furnishing of any inaccurate particulars of income nor could it be validly held that there was any concealment of income on the facts of the case neither there was any specific finding by learned ACIT regarding furnishing of inaccurate particulars or concealment of income and as such, the penalty so levied is unsustainable in law and liable to be deleted as such.

2.1 That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts while sustaining the initiation of penalty proceedings without recording a valid satisfaction which is a prerequisite for initiation of penalty under Section 271(1)(c) of the Act.

3. That the Ld Commissioner of Income tax (Appeals) has further gone wrong in sustenance of levy of penalty of Rs. 1,29,49,542/- by ignoring the fact that all material facts relevant to said claim were duly furnished by assessee before lower authorities.

3.1 That the Ld Commissioner of Income tax (Appeals) has gone wrong in sustaining the penalty of Rs.1,29,49,542/- on debatable issue.

3.2 That the Ld Commissioner of Income tax (Appeals) has gone wrong in sustaining the penalty of Rs. 1,29,49,542/- on Accrued incentive even where similar disallowance was deleted by Ld CIT(A) in AY 2008 - 09 and AY 2006 - 07;

3.3 That the Ld Commissioner of Income tax (Appeals) has gone wrong in sustenance of levy of penalty on the issue of depreciation on **OB** vans whereas Ld Assessing Officer has himself allowed the depreciation only on written down value of **OB** vans [i.e. after considering the depreciation in AY 2004-05] in the next assessment years i.e. AY 2005-06 onwards. “

3. The assessee mainly aggrieved by levy of penalty of Rs.1,29,49,542/- levied on following two additions:-

- | | | |
|------|-------------------------|------------------|
| (i) | Accrued Incentive | Rs.2,05,69,764/- |
| (ii) | Depreciation on OB Vans | Rs.1,55,26,521 |

3.1 At the outset, the learned Counsel for the assessee pointed out that in the quantum proceedings the Tribunal in ITA. No. 2452 (Del) of 2013 vide order dated 28.03.2019 have deleted both the additions vide para No. 10 and para No. 16 of the said order. Thus, penalty levied on the same addition cannot be sustained.

4. The ld. DR fairly conceded before us that both the additions stand deleted.

5. Since the very foundation on which penalty stand levied, stands deleted by the Tribunal, therefore, penalty has no legs to stand and the same is directed to be deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on : 13/12/2021.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 13/12/2021.

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	13.12.2021
Date on which the typed draft is placed before the dictating member	13.12.2021
Date on which the typed draft is placed before the other member	13.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	13.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	13.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	13.12.2021
Date on which the final order is uploaded on the website of ITAT	13.12.2021
date on which the file goes to the Bench Clerk	13.12.2021
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	