

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING)]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 1594/DEL/2018 [A.Y. 1996-97]

ITA No. 1595/DEL/2018 [A.Y. 1996-97]

Pasargad Technolgies Ltd  
[Formerly M/s Pearls Intercontinental]  
112-A, Ekta Enclave, Near Peera Garhi  
New Delhi  
[PAN: AAACP 6925 A]

Vs.

The Dy. C.I.T  
Circle - 14(1)  
New Delhi

(Applicant)

(Respondent)

Assessee By : Shri Pawan Sachdeva, Adv  
Department By : Shri Kipgen, CIT-DR

**Date of Hearing : 09.02.2022**

**Date of Pronouncement : 09.02.2022**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above two separate appeals by the assessee are preferred against two separate orders of the Commissioner of Income Tax [Appeals]-VII, New Delhi dated 19.01.2018 and 16.02.2018 pertaining to Assessment Year 1996-97.

2. The common grievance of the assessee in both these appeals relates to the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. Representatives were heard at length. Case records carefully perused.

4. The peculiar facts of the appeals under consideration are that vide order dated 29.03.2012, the Assessing Officer levied penalty u/s 271(1)(c) of the Act amounting to Rs. 5,65,55,859/-.

5. The assessee agitated the levy before the ld. CIT(A).

6. After considering the facts and submissions, and after quoting the submissions made by the assessee at para 10 of his order, the ld. CIT(A) inserted the following para which we fail to understand how it was made

part of his order when the same was not part of the submissions of the assessee :

"In the light of the directions given by the Hon'ble ITAT, Delhi, as enumerated above, I have carefully considered the submissions of the appellant and have also gone through the evidences placed on record by the appellant in support of its case.

It appears to be correct that godown building of the appellant was demolished and loss of stock occurred which was duly disclosed in the audited accounts filed forming part of the return. It is also correct that there was no financial benefit by making wrong claim in the tax return.

I have also carefully considered the spirit of the judgments given by the Hon'ble Supreme Court of India in case of Reliance Petro products and India Cement (Supra).

Thus, the Hon'ble Supreme Court has held that where the assessee has furnished all the details of its expenditure as well as income in its return, which in themselves were not found to be inaccurate, nor could be viewed as concealment of income on its part and merely because the assessee had claimed the expenditure, which has not been accepted by the Revenue cannot lead to levy of penalty under section 271(1)(C) of the Act.

In the light of the evidences on record, observations of the Hon'ble High court in quantum appeal for the year under reference and respectfully following the ratio laid down by the Hon'ble Supreme Court. I hold that appellant did not make a false claim. Mere disallowance of claim of loss of stock in quantum appeal does not mean appellant made a wrong claim or filed inaccurate particulars of its income.

In view of the above appeal is allowed and penalty levied Is cancelled."

7. As per the above findings, the ld. CIT(A) has cancelled the levy of penalty. However, the ld. CIT(A) continued to decide the appeal and at para 13.32, held as under:

"The appellant had deliberately furnished inaccurate particulars of its income with a view to concealment of income. The explanation of the appellant is not bonafide. The penalty against the appellant u/s 271(1)(c) is Rs. 7,88,04,440/- on a concealed income of Rs.17,13,14,030/-. This amount is sustained. The penalty imposed by the AO of Rs.5,65,55,859/- is upheld and the penalty is further enhanced by Rs.2,22,48,581/-. The grounds of appeal are thus ruled against the appellant."

8. This is the subject matter of ITA No. 1594/DEL/20118. However, on 16.02.2018, the ld. CIT(A) framed another order u/s 154 of the Act, rectifying the mistake apparent from record in his earlier order. In this order, the ld. CIT(A) deleted para 10 of its earlier order and concluded by holding that “This being a mistake apparent from record is hereby rectified”. This is subject matter of ITA No. 1595/DEL/2018.

9. Both the appellate orders of the ld. CIT(A) are not only confusing but have not considered the facts in true perspective. As mentioned elsewhere, the appellate orders are dated 19.02.2018 and 16.02.2018 whereas the order u/s 254/250/143C of the Act framed by the Assessing Officer consequent upon the order of the Tribunal in quantum appeal is dated 06.03.2013 by which taxable income was determined at Rs. NIL. The appellate authority ought to have considered this order of the Assessing Officer.

10. We are of the considered opinion that the confusing appellate order has to be rectified in light of the order of the Assessing Officer giving appeal effect to the order of the Tribunal. Therefore, we restore both

the appeals to the file of the ld. CIT(A) to decide afresh after considering the orders of the Assessing Officer dated 06.03.2013 giving effect to the order of the Tribunal.

11. In the result, both the appeals of the assessee in ITA Nos. 1594 & 1595/DEL/2018 are allowed for statistical purposes.

The order is pronounced in the open court on 09.02.2022 in the present of both the rival representatives.

Sd/-

**[AMIT SHUKLA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 09<sup>th</sup> February, 2022.

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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