

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.6404/Del/2019  
Assessment Year: 2013-14

Omaks Electronics,  
A-20, Khasra No.26/10,  
Dabri Extension,  
New Delhi.

Vs. ITO,  
Ward-44(3),  
New Delhi.

PAN: AABF05904G

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	04.05.2022
Date of Pronouncement	:	18.05.2022

ORDER

This appeal has been preferred by the assessee against the order of the CIT(A)-15, Delhi, dated 10.06.2019 by which penalty of Rs.3,19,420/- has been confirmed.

2. A notice through speed post acknowledgement due was sent to the appellant on 07.02.2022, which has been returned un-served with a remark 'no such person in this name". Notice has been issued to the appellant/assessee on the address A-20, Khasra No.26/10, Dabri Extensions, New Delhi, Delhi – 110 045 and the same address has been mentioned in Form 36 by the assessee in the

column of 'complete address for sending notices'. As per judgment of Hon'ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. dated 18.10.2019 in Civil Appeal No. 8132 of 2019, in absence of any specific information to the Assessing Officer with respect to change of address and/or change of the name of assessee, Assessing Officer would be justified in sending the notices at the available address mentioned in the PAN database of the assessee. Respectfully following the same, I hold that when the assessee has filed return mentioning a particular address as per his PAN database, which has also been noted by the Assessing Officer as well as by the assessee himself in Form No. 36 as complete address for sending the notices and the assessee is not found available on-the same address and no information about change of address to the Assessing Officer by the assessee, then we safely presume that all possible efforts have been made regarding service of notice on the assessee on the address given in PAN data by assessee and assessee is not available, then we have no alternate but to proceed ex parte qua assessee to decide this appeal after hearing the submissions of Id. Sr. Departmental Representative (DR).

3. Facts of the case, in brief, is that the AO imposed penalty by observing as follows:-

*“Considering the facts of the case, I hold that the assessee has concealed its taxable income by way of furnishing inaccurate particulars of its income, I am of the view that the assessee is liable for imposition of penalty u/s 271(l)(c) of the Income Tax Act, 1961. In this case, the assessee has willfully and knowingly filed inaccurate particulars of its taxable income to the extent of Rs.10,33,720/- and as*

*per the Explanation 1 to Section 271(l)(c) the said amount is deemed to be the income on which tax was sought to be evaded.*

*In view of above discussion, it is clear that the penalty u/s 271(1)(c) of the Income Tax Act, 1961 is attracted in the assessee's case. Minimum and maximum penalty imposable in the case is computed as under:-*

<i>Concealed income as discussed above</i>	<i>Rs. 10,33,720/-</i>
<i>Tax sought to be evaded on amount of income concealed</i>	<i>Rs. 3,19,419/-</i>
<i>Minimum penalty u/s 271(1) (c) @ 100% (R/O)</i>	<i>Rs. 3,19,420/-</i>
<i>Maximum penalty u/s 271(1) (c) @ 300%</i>	<i>Rs. 9,58,257/-</i>

*I, therefore, impose a minimum penalty of Rs. 3,19,420/- u/s 271(l)(c) of the Income-tax Act, 1961.”*

4. The Id. CIT(A) confirmed by observing as follows:-

*“4.4 Considering the facts of the case and judicial pronouncements on this issue, the contentions of Ld. AR are not acceptable. The explanation furnished by the appellant is not satisfactory. The appellant has very much furnished the inaccurate particulars of its income and the rigours of penal provisions of section 271(1)(c) are squarely applicable . The AO was justified in levying the penalty of Rs. 3,19,420/- with reference to the addition on account of disallowance of excess deduction claimed by the assessee u/s 80IC. Therefore, considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO and therefore, the penalty of Rs 3,19,420/- levied by the AO u/s 271 (1)(c) is hereby confirmed.”*

5. In the grounds and submissions before the AO the assessee submitted as under:-

*“Income tax return at NIL amount was filed and paid tax under MAT. The assessee firm has claimed deduction u/s. 80IC for Rs. 13,78,292/- as 100% of income but in the assessment deduction was allowed @25% of Rs.3,44,753/- and disallowed Rs.10,33,719/- and assessment was completed at Rs. 10,33,719/-. In the year 2012-13, the assessee*

*firm has carried out major expansion for purchase of additional plant & machinery. On that basis, it was understood that deduction is also available @ 100% for next 5 years and the assessee has claimed deduction on that basis. There was no intention to claim excess deduction and it was due to misunderstanding of the section and due to bonafide mistake. However the assessee has paid tax under MAT.”*

6. The main contention of the assessee against imposition of penalty is that during FY 2012-13 the assessee has carried out major expansion for purchase of additional plant & machinery, thus, it was understood that deduction is also available @ 100% for AY 2013-14 and for the next five years and assessee claimed deduction u/s 80IC of the Act on such premise bona fide under bona fide mistake. Hence, penalty u/s 271(1)(c) of the Act is not leviable.

7. The ld. Sr. DR supported the penalty order and submitted that the assessee was aware of the fact that he is not entitled for deduction/exemption u/s 80IC of the Act @ 100% for AY 2013-14, but, he falsely claimed @ 100%. Thus, he furnished a wrong untenable claim and, therefore, the penalty was rightly imposed.

8. On careful consideration of the above noted submissions, I am of the view that the assessee wrongly claimed deduction u/s 80IC of the Act @ 100% for which he was not entitled. Thus, explanation of the assessee is not plausible that due to major addition to plant & machinery it was understood that the assessee is entitled for 100% exemption u/s 80IC of the Act. This is not a plausible explanation and rightly rejected by the authorities below.

9. Since the AO as well as the Id.CIT(A) has held that the assessee knowingly and willfully filed inaccurate particulars of his income, thus, penalty u/s 271(1)(c) of the Act was rightly levied by the assessee.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 18.05.2022.

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 18<sup>th</sup> May, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi