

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.8885/Del/2019
(निर्धारण वर्ष / Assessment Year : 2014-15)

Arun Jain B-4/7, FF, Rana Pratap Bagh, New Delhi PAN No. AALPJ3125A	बनाम/ Vs.	ITO Ward- 47 (5) New Delhi
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Sh. Gurjeet Singh, CA
प्रत्यर्थी की ओर से / Respondent by :	Sh. Zahid Parvez, Sr. DR

सुनवाई की तारीख / Date of Hearing	13.06.2022
घोषणा की तारीख /Date of Pronouncement	17.06.2022

आदेश/ORDER

PER PRADIP KUMAR KEDIA, AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-16, New Delhi ('CIT(A)' in short), dated 13.09.2019 concerning AY 2014-15.

2. The assessee has raised the following grounds of appeal :-
 1. *Because the action for levying the Penalty u/s. 271 (1) (c) is being challenged on facts and law*

since AO has not specified under which limb penalty is levied i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income.

2. Because the action is under challenge on facts and law for levying penalty of Rs.11,63,760/- u/s. 271 (1) (c) by treating difference in stock as unexplained investment.

3. When the matter was called for hearing the Ld. Counsel for assessee fairly submitted that first ground is technical and is not pressed. Ground No.1 is thus dismissed as not pressed.

4. As regards ground No.2, the Ld. Counsel submitted that the assessment of the assessee was completed u/s. 143 (3) of the Act. The income of the assessee was assessed at Rs.44,14,320/- as against returned income of Rs.4,64,320/-. While framing the assessment, the AO made an addition of Rs.39,50,000/- on account of unexplained investments u/s. 69 of the Act towards addition on account of excess opening stock. The penalty of Rs.11,63,760/- were imposed pursuant to penalty proceedings simultaneously initiated on the additions so made. In this context the Ld. Counsel submitted that the quantum additions was substantially brought down was by the coordinate Bench of ITAT in ITA No.7863/Del/2018 order dated 13.05.2022. The Tribunal in the quantum proceedings have restricted the additions on account of low NP rate being 2% of the total sales turnover and deleted the remaining additions. The Ld. Counsel thus submitted that the additions have been retain on a purely estimated basis for which imposition of penalty u/s. 271 (1)(c) is not justified.

5. The Ld. DR for the revenue relied upon the orders of the CIT(A).

6. As point out on behalf of the assessee, the quantum addition itself has been substantially modified and scaled down by the coordinate Bench of ITAT in ITA No. 7863/Del/2018 order dated 13.05.2022.

7. The operative para of the ITAT order is reproduced here under :

“7. In the totality of facts and circumstances of the issue as noted above, I reach to a logical conclusion that the Assessing Officer was not correct and justified in making addition in the hands of assessee merely on the basis of difference in the two figures, i.e. closing stock as on 31.03.2013 and opening stock as on 01.04.2013. However, to cover all possible leakages of revenue, I am of the considered opinion that the addition is required to be made in the hands of assessee on account of low NP rate. Therefore, the Assessing Officer is directed to make addition in the hands of assessee taking NP rate of total sale turnover as 2% of sales/ turnover. The Assessing Officer is directed to recalculate the addition accordingly.”

8. In the light of order of the ITAT, it is manifest that additions retained in the quantum are purely on estimated basis without any comprehensive allegation of ‘furnishing of inaccurate particulars of income’ etc. *per sec.*

9. Under these circumstances, sustaining penalty on estimated addition is unjustified in the light of decision of Hon’ble Delhi High

Court in the case of *CIT vs. Nokia India Pvt. Ltd. as reported in 343 ITR 434 (Del)*.

10. Consequently, we find merit in the plea of the assessee. The ground No.2 of the appeal of the assessee is thus allowed.

11. In the result, the appeal of the assessee is partly allowed.

This Order pronounced on 17/06/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Dated: 17/06/2022
*Neha, Sr. Private Secretary

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	16.06.2022
Date on which the typed draft is placed before the dictating Member	17.06.2022
Date on which the typed draft is placed before the Other Member	17.06.2022
Date on which the approved draft comes to the Sr. PS/PS	17.06.2022
Date on which the fair order is placed before the Dictating Member for pronouncement	17.06.2022
Date on which the fair order comes back to the Sr. PS/PS	17.06.2022
Date on which the final order is uploaded on the website of ITAT	17.06.2022
Date on which the file goes to the Bench Clerk	17.06.2022
Date on which the file goes to the Head Clerk	