

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA no. 1058/Del/2020
[Assessment Year: 2013-14]**

Raygada Minerals and Chemicals P. Ltd. 6, Jain Bhawan, 12, Bhagat Singh Marg, New Delhi-110001 PAN: AAFCR1212F	<u>Vs</u>	DCIT, Circle-21(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by		Sh. Mukul Gupta, Adv.
Respondent by		Sh. Toufel Tahir, Sr. DR
Date of hearing		21.07.2022
Date of pronouncement		27.07.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-7, New Delhi dated 13.01.2020 pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

- “1. The order passed by the Ld. AO and CIT(A) is bad in law and against the facts of the case.
2. That the Ld. CIT(A) erred in considering the fact that the ld. AO erred in issuing penalty show cause notice, not aware / forming opinion that whether it is for concealment of income or for furnishing inaccurate particulars of income.
3. That the Ld. CIT(A) erred in considering the fact that Ld. AO erred

in imposing the penalty u/s 271(1)(c) of the Act which is time barred.

4. *That the Ld. CIT(A) erred in sustaining the penalty imposed by the Ld. AO Rs. 30,96,134/- u/s 271(1)(c) of the Act.*

5. *That the Ld. CIT(A) erred in confirming the penalty imposed without considering the fact by Ld. AO imposed the penalty of Rs. 30,96,134/- u/s 271(1)(c) of the Act merely on disallowance of expenses.*

6. *That the ld. CIT(A) and Ld. A.O. also erred in not following various judgments of jurisdictional High Court and ITAT.*

7. *That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.”*

2. Facts, in brief, are that in this case the assessee filed his return of income at Nil and claimed carry forward of losses amounting to Rs. 93,82,285/-. The case of the assessee was taken for scrutiny assessment and the Assessing officer while framing the assessment observed that the assessee company had just acquired plant and equipment, but were not put to use and shown under the head “capital work in progress” and also no revenue was booked. The Assessing officer, therefore, disallowed the expenses in respect of employees benefit of Rs. 39,80,482/- and other expenses of Rs. 56,07,611/- and restricted the addition to the extent of loss carried forwarded by the assessee and assessed income at Nil. The Assessing officer also initiated penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 (in short “ the Act”). Subsequently, the Assessing Officer imposed penalty u/s 271(1)(c) at 100% of the tax sought to be evaded amounting to Rs. 30,96,134/-. Aggrieved against it the assessee filed an appeal before the learned CIT(Appeals), who after considering the submissions, dismissed the appeal and confirmed the

penalty levied by the Assessing Officer. Aggrieved against it the assessee is in appeal before this Tribunal.

3. At the outset, learned counsel for the assessee pointed out that the matter was carried before the Tribunal in quantum proceedings and the additions made on account of disallowances have been reversed by the coordinate Bench of the Tribunal in ITA no. 1231/Del/2018. A copy of the Tribunal's order dated 17.11.2021 is also placed on record. Therefore, the learned counsel submitted that the penalty would not survive.

4. Per contra, learned Sr. DR opposed the submissions and relied on the orders of the authorities below.

5. We have heard rival submissions and perused the material available on record. We find that in quantum proceedings in assessee's case in ITA no. 1231/Del/2018 the coordinate Bench of the Tribunal has deleted the disallowance by observing as under:

“4. From the above, we find that the section deals with setting up of business. There is a difference between pre-operative expenses and pre-commencement expenditure. A company set up when the company is about to start the business and operational activities. The company may not earn revenues which may results in profits in the initial stages but it does not mean that the company has not been set up. In the instant case, the expenses of employees and other expenses claimed by the assessee are in the nature of expenses allowed u/s 37 of the Income Tax Act. Hence, the disallowance made by the AO is hereby directed to be deleted.

6. Since in quantum appeal the disallowance has been deleted by the coordinate

Bench of the Tribunal, the penalty on such disallowance would also not survive.

We, therefore, direct the Assessing Officer to delete the penalty levied u/s

271(1)(c) of the Act.

7. In the result, assessee's appeal is allowed.

Order pronounced in open court on 27th July, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI