

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 1116/DEL/2018 (A.Y 2009-10)**

<p>Chandralekha Construction Pvt. Ltd., 119, 1<sup>st</sup> Floor, Sant Nagar, East of Kailash, New Delhi – 110 065. <b>PAN No. AAACC4095N</b> <b>(APPELLANT)</b></p>	Vs.	<p>DCIT,  Circle : 6 (1)  New Delhi.  <b>(RESPONDENT)</b></p>
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<b>Assessee by :</b>	<b>N o n e;</b>
<b>Department by:</b>	<b>Shri R. S. Yadav, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>23.08.2022</b>
<b>Date of Pronouncement</b>	<b>26.08.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee for assessment year 2009-10 against the order of the Id. Commissioner of Income Tax (Appeals)-2, New Delhi, dated 02.02.2018.

2. The assessee has raised the following grounds of appeal:-

*“1. Appeal No: 168/15-16 was filed with of CIT (A)-2 New Delhi on 24<sup>th</sup> April, 2015 by appellant company name Chandralekha Constructions Private Limited. Learned CIT (A) while passing the order inadvertently mentioned the name of appellant as Chandralekha Infrastructure Pvt. Ltd. instead of Chandralekha Constructions Pvt. Ltd. The appellant has filed letter of correction of mistake apparent from records (copy attached). Learned CIT (A) has passed corrigendum order. (copy attached).*

*2. That having regard to the facts and circumstances of the case, the Learned CIT (A) as well as Learned Assessing Officer have erred in framing the impugned Assessment Order and that is in violation of principles of natural justice.*

*3. That the penalty orders passed by the Learned CIT (A) Learned Assessing Officer U/S 271 (I) (c) are erroneous, unjustified, unreasonable and deserve to be quashed.*

*4. That the penalty u/s 271 (1) (c) imposed by Learned Assessing Officer be deleted.”*

3. None appeared for the assessee. The assessee has filed application for adjournment. Since the Appeal is filed by the Department and by looking into the grounds of Appeal and issues involved in the Appeal, we deem it fit to decide the appeal after hearing the Ld. DR and after verifying the material on record.

4. The main grievance of the assessee is regarding the penalty order passed u/s 271(1)(c) of the Act by imposing the penalty of Rs. 7,46,502/- which has been confirmed by the CIT(A).

5. Brief facts of the case are that, the assessee filed its Return of Income on 30.09.2009 declaring an income of Rs. 4,25,71,950/-. The assessment in this case was completed u/s 143(3) on 27.12.2011 at an income of Rs. 5,21,85,890/- after making an addition on account of disallowance of Rs. 62,63,355/- payment made to sub contractors and disallowance of claim of financial charges. As against the assessment order, the assessee has filed an Appeal before the CIT(A) vide order dated 30/08/2013, the Ld.CIT(A) has deleted the addition of Rs. 33,50,583/- made by the A.O on account of financial charges and with regard to the addition of Rs. 62,63,355/- as per the Assessing Officer these payments to the sub contractors without deduction of tax at source. Thus, after considering the submissions of the assessee company the CIT(A) deleted part of addition of Rs. 40,67,113/- out of the total addition of Rs. 62,63,355/- and confirmed the addition of Rs. 2196,242/- to the total income.

6. The above said addition sustained by the CIT(A) has been treated as concealment of income and an order u/s 271(1)(c) of the Act came to be passed.

7. As against the penalty order, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT (A) vide order dated 25/10/2017 dismissed the appeal filed by the assessee.

8. Aggrieved by the order dated 24/04/2015 passed by CIT(A), the assessee has preferred the present Appeal. It is not in dispute that the original assessment order, the A.O has made an addition of Rs. 62,63,355/- on account of payments of sub contractors which have not been subject to tax deduction at source and also a sum of Rs. 33,50,583/- on account of financial charges. The said assessment order has been called in question by the assessee wherein the Ld.CIT(A) has substantially gave a relief to the

assessee by deleting the addition of Rs. 33,50,583/- made on account of financial charges and out of the addition of Rs. 62,63,355/- on account of payment of sub-contractors deleted part of the addition of Rs. 40,67,113/-.

9. It is the case of the assessee is that the CIT(A) has sustained addition of Rs. 21,96,242/- made on account of payment to sub contractor which has not been subjected to TDS and the same was a clerical mistake not a deliberate one. Further the said fact has been voluntarily informed by the assessee to the A.O. Non-deduction of the TDS is only a technical mistake and cannot be construed as concealment or submission of inaccurate particulars.

10. The Hon'ble Supreme Court in the case of Reliance Petro Product Pvt. Ltd. 322 ITR 152 wherein it is held that “ *merely because the assessee has claimed expenditure, which claim was not accepted or was not acceptable to the Revenue, that, by itself, not attract the penalty u/s 271(1)(c) of the Act.*”

11. Further the Ahmadabad Bench of the Tribunal in the case of ITO Vs. Vishal Madhusudan Choksi 214(1) TMI 910, held as under:-

*"Deletion of penalty u/s 271(1)(c) of the Act - Held that:- The Assessing Officer has nowhere alleged that the payment of interest made to finance company on which the TDS was deductible is non genuine or bogus - It is also a fact that there is nothing on record or alleged that the payment of interest is excessive or unreasonable - The disallowance has been made for non-deduction of TDS in view of provisions of section 40(a)(ia) - The legal fiction created by section 40(a)(ia) will not attract penalty for furnishing of inaccurate particulars of income because there is no inaccurate particulars in the return of income."*

Further the Hon'ble Gujarat High Court in the case of CIT Vs. M/s Venus Engineers 2011 (8) TMI 1163 (Guj) (H.C) wherein the Hon'ble High Court has held as under:-

*"On hearing learned Counsel Mrs. Mauna M. Bhatt and on examining the orders of adjudicating authorities, it can be seen that Tribunal was of the opinion that due to ignorance of the provision containing in Section 40(a)(ia) of the Act, the assessee did not deduct TDS from the payment made to labour, transport and carting expenses. The Tribunal was also actuated by the fact that the C.A. who audited the accounts of the assessee under Section 44AB did not point out any infirmity on account of non-deduction of IDS., otherwise, all the relevant accounts were adduced before the Assessing Officer. Thus, when the Tax audit report also did not point out the TDS default to the assessee, the Tribunal concluded that the mistake made by assessee was bonafide and the explanation was found genuine.*

*5. The Tribunal drew support from the order of CIT(A) that there was no concealment nor was this is a case of furnishing of inaccurate particulars.*

*6. The reasonings given by both the adjudicating authorities concurrently cannot be held as perverse nor are there any grounds made out by the Revenue to dislodge the findings.*

*Resultantly, when there is no concealment nor any occasion of furnishing inaccurate particulars to bonafide mistake, Tribunal rightly uphold the order of CIT(A), deleting the penalty, therefore,*

*this Tax Appeal* merits no consideration as question of law is to be determined. Hence, same is dismissed."

12. By drawing the support of the above judicial pronouncements, we are of the opinion that there is neither concealment nor furnishing of inaccurate particulars by the assessee in the case on hand. Resultantly, the Grounds of Appeal filed by the assessee are allowed.

13. In the result, the Appeal filed by the assessee is allowed and the penalty imposed by the A.O which was confirmed by the CIT(A) is hereby deleted.

Order pronounced in the open court on : **26/08/2022.**

**Sd/-**  
**( SHAMIM YAHYA )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated : 26 /08/2022

\*R.N\*

Copy forwarded to :

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

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**

