

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'A' BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President
and, Kavitha Rajagopal, Judicial Member]**

ITA No.: 6277/Mum/2019
Assessment year: 2014-15

**Assistant Commissioner of Income Tax
Circle 16(1), Mumbai**

..... **Appellant**

Vs.

Asianet News Networks Pvt Ltd
*2nd floor, Jay Chambers, Service Road,
Vile Parle East, Mumbai 400 057
[PAN: AAHCA3961A]*

..... **Respondent**

Appearances:

Shailja Rai and Mehul Jain *for the appellant*
Sheetal Borkar *for the respondent*

Date of concluding the hearing : 27/05/22
Date of pronouncing the order : 26/08/22

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order dated 24th July 2019 passed by the learned CIT(A) in the matter of penalty under 271(1)(c) of the Income Tax Act, 1961, for the assessment year 2014-15.

2. Grievance raised by the appellant are as follows:

i) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty levied u/s.271(1)(c) ignoring the fact that the issue on which penalty was imposed relates to the addition/disallowance made with reference to the total income determined under normal provisions of the Income Tax Act but not Book Profit computed under deeming provisions of section 115JB ?*

ii) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty levied u/s.271(1)(c) ignoring the fact that, in the instant case, the tax is charged on total income determined under normal provisions of the Income Tax Act but not on Book Profit computed under deeming provisions of section 115JB ?*

iii) *Whether on the facts, in the circumstances of the case and as per law, the Ld.CIT(A) has erred in directing to delete the penalty levied u/s.271(1)(c) failing to appreciate that the*

case of assessee does not fall under the category specified in Circular No.25 of 2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, Ministry of Finance, New Delhi?

iv) The appellant prays that the order of Ld. CIT(A) on the above grounds be set-aside and that of the assessing officer be restored.

3. As a plain look at the impugned order passed by the learned CIT(A) would show, the impugned penalty is deleted by the learned CIT(A) on the short ground that the income assessed in the related assessment order was under section 115JB, as evident from the following observations:

5.1.1 The Ld. AO initiated and imposed penalty u/s.271 (1) (c) of the Act for the addition of Rs. 16,75,94,093/- on account of provision for intercorporate deposit and Rs. 16,75,94,093/- being interest receivable on CD. During the course of appellate proceeding, a written submission was filed which find place in para 4 of this order. The appellant claimed that income of the assessee was assessed u/s. 115JB of the Act. It was further claimed that in view of the CBDT Circular No.25/2015, no penalty can be imposed wherein addition/ disallowance made under normal Provisions of the Income Tax Act, 1961 but tax levied under MAT provisions u/s 115JB/115JC, for cases prior to A.Y. 2016-17. For ready reference circular is reproduced as under:

Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act 2000 with effect from 1-4-2001.

2. Under clause (iii) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed.

3. In this context, Hon'ble Delhi High Court in its judgment dated 26.8.2010 in ITA No.1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty under section 271 (1)(c) of the Act could not be imposed with reference to additions/ disallowances made under normal provisions. The judgment has attained finality.

4. Subsequently, the provisions of Explanation 4 to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT u/s 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f.01.04.2016.

5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits us 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions/ disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty us 271 (1)(c) of the Act, will depend on the nature of adjustment.

6. *The above settled position is to be followed in respect of section 115JC of the Act also.*

7. *Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.*

5.1.2 *In case of the appellant, tax was levied under MAT provision u/s. 115JB and A.Y. involved is 2015-15 which is prior to A.Y. 2016-17. Therefore, case of the appellant is covered by the circular of the CBDT. Hence penalty of Rs. 6,37,35,587/- imposed by AO u/s. 271 (1)(c) is deleted.*

4. Having heard the parties and having perused the material on record, however, we find the basis of learned CIT(A)'s action to be factually incorrect inasmuch as the related assessment under section 143(3) having been completed on an income of Rs 21,51,092 assessed under the normal provisions of the Act. The conclusions arrived at by the learned CIT(A) are, therefore, incorrect on this aspect of the matter. The order of the learned CIT(A) thus is unsustainable in law, and we vacate the same.

5. As regards the justification for the conclusions arrived at by the learned CIT(A) on merits, as advanced by the learned counsel for the assessee, we deem it fit and proper to remit the matter to the file of the learned CIT(A) for adjudication on these arguments. We, accordingly, vacate the impugned order of the learned CIT(A), and remit the matter to the file of the learned CIT(A) for fresh adjudication by way of a speaking order, in accordance with the law and after giving yet another opportunity of hearing to the assessee. Ordered, accordingly.

6. In the result, the appeal is allowed. Pronounced in the open court today on the 26th day of August 2022.

Sd/-
Kavitha Rajagopal
(Judicial Member)
Mumbai, dated the 26th day of August, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to: (1) *The appellant* (2) *The respondent*
(3) *CIT* (4) *CIT(A)*
(5) *DR* (6) *Guard File*

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai