

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.6062/M/2019
Assessment Year: 2015-16**

ACIT, Circle -16(1), Room No.439, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Asianet News Network Pvt. Ltd., 2 nd Floor, Jay Chambers, Service Road, Vile Parle East, Mumbai – 400 057 PAN: AAHCA3961A
(Appellant)		(Respondent)

**CO No.97/M/2022
(Arising out of ITA No.6062/M/2019)
Assessment Year: 2015-16**

M/s. Asianet News Network Pvt. Ltd., 2 nd Floor, Jay Chambers, Service Road, Vile Parle East, Mumbai – 400 057 PAN: AAHCA3961A	Vs.	ACIT, Circle -16(1), Room No.439, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Sheetal Borkar, A.R.
Revenue by : Shri Manoj Sinha, D.R.

Date of Hearing : 10 . 08 . 2022

Date of Pronouncement : 25 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeal and cross objections bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant ACIT, Mumbai (hereinafter referred to as the Revenue) by filing the present appeal and the cross objector M/s. Asianet News Network Pvt. Ltd. (hereinafter referred to as the assessee) by filing the cross objections sought to set aside the impugned order dated 30.07.2019 passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] on identical grounds inter alia that:

ITA No.6062/M/2019 (Revenue's appeal)

“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(l)(c) ignoring the fact that the issue on which penalty was imposed relates to the addition/disallowance made with reference to Book Profit under deeming provisions of section 115JB and not with reference to the total income determined under normal provisions of the Income Tax Act.

ii) 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(l)(c) by wrongly relying on the judgement rendered by the Hon'ble High Court of Delhi in the case of Nalwa Sons Investment Ltd 327 ITR 543 (Delhi).

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(l)(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.

v) *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

CO No.97/M/2022

“1. The learned AO and CIT(A) have both erred in law and on facts in levying penalty and the same be annulled, since penalty is levied in pursuance of vague notice i.e without specifying whether it is inaccurate particular or concealment of income hence bad in law.

2. The learned AO erred in levying the penalty U/s 271(1)(C) of the act without specifying the exact limb of section 271(1)(C) of the act, and without striking the other limb which is not applicable to the assessee's case hence notice issued is bad in law.

3. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal be allowed.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of assessment framed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) determining the total income at nil under normal provisions and book profit at Rs.10,66,56,587/- under section 115JB of the Act by making addition of Rs.1.75 crores and Rs.4,08,10,740/- on account of interest income accrued on ICDs and on account of disallowance of bad debts respectively, penalty proceedings have been initiated by the Assessing Officer (AO) under section 271(1)(c) of the Act for concealing particulars of income or furnishing inaccurate particulars of income. Declining the contentions raised by the assessee AO proceeded to levy penalty of Rs.8654135/- at the rate of 100% of the tax sought to be evaded under section 271(1)(c) of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the penalty by allowing the appeal. Feeling aggrieved the Revenue as well as assessee have come up

before the Tribunal by way of filing present appeal and cross objections respectively.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly, penalty proceedings under section 271(1)(c) of the Act have been initiated by the AO on the basis of addition of Rs.1.75 crore and Rs.4.8 crores on account of interest income earned by the assessee on the ICDs and by way of disallowance of provisions for doubtful debt respectively under section 115JB of the Act. It is also not in dispute that qua addition of Rs.1.75 crore AO initiated penalty proceedings for furnishing inaccurate particulars of income and for addition of Rs.4.8 crores penalty proceedings have been initiated for concealing particulars of income and for furnishing inaccurate particulars of income.

7. The Ld. D.R. for the Revenue challenging the impugned order passed by the Ld. CIT(A) deleting the penalty levied by the AO under section 271(1)(c) of the Act contended inter alia that the Ld. CIT(A) has erred in relying upon the CBDT circular No.25/2015 and; that had this case not been put to scrutiny by the department, the evasion of tax in this case would not have been detected.

8. However, on the other hand, the Ld. A.R. for the assessee to repel the arguments addressed by the Ld. D.R. for the Revenue,

contended inter alia that when addition has been made under section 115JB of the Act no levy of penalty under section 271(1)(c) of the Act is attracted as per circular 25/2015 issued by CBDT and relied upon the order passed by the Ld. CIT(A); that the Ld. CIT(A) deleted the penalty levied by the AO by relying upon the CBDT circular No.25/2015 whereby it is categorically held that when addition /disallowance is made under MAT provisions under section 115JB of the Act prior to 2016-17 no penalty can be levied by returning following findings:

“5.1.1 The Ld. AO initiated and imposed penalty u/s.271(1)(c) of the Act for the addition of Rs.4,08,10,740/- on account of provision for Bad Debts. 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 (Hi) 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 u/s 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 u/s 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 .Y. involved is 2015-16 which is prior to A.Y. 2016-17. Therefore, case of the appellant is covered by the circular of the CBDT. Hence penalty of ₹86,54,1357-imposed by AO u/s.271(1)(c) is deleted.”

9. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the Ld. Lower Revenue Authorities and argument addressed by the Ld. Authorized Representatives of both the parties to the appeal the sole question arises for determination in this case is:

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings”

10. Bare perusal of the impugned order passed by Ld. CIT(A) goes to prove that as per circular No.25/2015 applicable to the year under assessment i.e. A.Y. 2015-16 when AO has computed the tax payable under normal provisions at nil, but computed the tax payable under deeming provisions of section 115JB of the Act the provisions contained under section 271(1)(c) of the Act are not attracted. When the CBDT circular No.25/2015 is based upon the decision rendered by Hon'ble Delhi High Court dated 26.8.2010 in ITA No.1420 of 2009 in the case of Nalwa Sons Investment Ltd., we find no illegality or perversity in the impugned order passed by the Ld. CIT(A) deleting the levy of penalty by AO under section 271(1)(c) of the Act.

11. However, assessee by filing cross objections also challenged the issuance of notice under section 274 read with section 271(1)(c) of the Act being invalid having not pressed the relevant limb of section 271(1)(c) of the Act, if assessee has concealed particulars of income or has furnished inaccurate particulars of income. However, since the appeal filed by the Revenue has already been dismissed the cross objections filed by the assessee are also dismissed having been become infructuous. Consequently, appeal filed by the Revenue as well as cross objections filed by the assessee are hereby dismissed.

Order pronounced in the open court on 25.08.2022.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.08.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.