

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E" : DELHI]

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 2800/Del/2018
निर्धारणवर्ष/Assessment Year: 2008-09

Addl. CIT, Special Range : 6, New Delhi.	<u>बनाम</u> Vs.	NTPC Limited, NTPC Bhawan, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003
		PAN No. AAACN0255D
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	Shri Ved Jain, Advocate; & Ms. Supriya Mehta, C. A.;
राजस्वकीओरसे / Department by :	Ms. Rinku Singh, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	01/09/2022
उद्घोषणाकीतारीख/Pronouncement on :	01/09/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal filed by the Revenue is against the order of the ld. Commissioner of Income Tax (Appeals)-34 [hereinafter referred to as CIT (Appeals)] New Delhi, dated 29.01.2018 in deleting

penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) for assessment year 2008-09.

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

“1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the penalty u/s 271 (1)(c) of the income Tax Act, 1961 (hereinafter referred to as "Act") on additions in respect of the following issues by ignoring finding of facts recorded by the Assessing officer (hereinafter referred to as "AO") that the assessee had admittedly debited patently wrong claim in respect of the expenses and also without appreciating the fact that the assessee had failed to discharge its onus to substantiate its claim in this regard:

- a) Interest paid to SEBs (State Electricity Boards);
- b) Reversal of Sales consequent to CERC (Central Electricity Regulatory Commission) order;
- c) Reversal of Sales in FY 2007-08;
- d) Recognition of Sales to SEBs in FY 2007-08;
- e) Disallowance of depreciation on mobile phones;
- f) Disallowance of depreciation on additional depreciation.

2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in not upholding the penalty u/s 271(1)(c) of the Act imposed by the AO by ignoring the fact that the assessee had taken a chance by making a patently incorrect and unsubstantially claim and the decision of Hon'ble jurisdictional High court in case of CIT Vs Zoom Communication Pvt. Limited (2010) 327 ITR 510, CIT vs NG Technologies Limited (2015) ITR 7, CIT Vs Escorts Finance Limited (2010) 328 ITR 44 and CIT Vs Harparshad and Company Limited (2010) 328 ITR 53? “

3. Both the parties placed copy of the ITAT order in ITA. No. 4083/Del/2014 dated 5.08.2022 and submitted that the Tribunal deleted the quantum addition made in the assessment order by the Assessing Officer.

4. We have perused the order of the Id. CIT (Appeals) and considering the submission of both parties and since the Tribunal in the order passed in ITA. No. 4083/Del/2014 dated 5.08.2022 deleted the additions/disallowances made in the assessment order passed under Section 143(3) of the Act which was the foundation for imposition of penalty under Section 271(1)(c) of the Act, the penalty order will not survive. In the circumstances the penalty order passed by the Assessing Officer imposing penalty under Section 271(1)(c) of the Act for the assessment year 2008-09 is set aside and the penalty is deleted.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 01/09/2022.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 01/09/2022.

MEHTA

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1. Appellant;
2. Respondent;
3. CIT

4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	01.09.2022
Date on which the typed draft is placed before the dictating member	01.09.2022
Date on which the typed draft is placed before the other member	01.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	01.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	01.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	01.09.2022
Date on which the final order is uploaded on the website of ITAT	01.09.2022
Date on which the file goes to the Bench Clerk	01.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	