

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 2784/DEL/2018 [A.Y 2013-14]

M/s Mekaster Engineering Ltd
908, Ansal Bhawan
K.G. Marg, New Delhi

Vs.

The Dy. C.I.T
Circle - 16(2)
New Delhi

PAN: AAACS 8785 P

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri Jeetender Chand, Sr. DR

Date of Hearing : 01.11.2022

Date of Pronouncement : 01.11.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 15, New Delhi dated 29.01.2018 pertaining to A.Y. 2013-14.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in confirming the penalty of Rs. 1,42,67,839/- levied by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. None appeared on behalf of the assessee in spite of notice. Therefore we decided to proceed exparte.

4. We have heard the Id. DR at length. Case records carefully perused.

5. Briefly stated, the facts of the case are that original return of income was filed by the assessee on 31.10.2013 declaring total income of Rs. 75,35,167/-. Return was selected for scrutiny assessment through CASS and, accordingly, statutory notices were issued and served upon the assessee.

6. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has made payments to NBFC, payment to contractors, legal and professional expenses on

which no TDS was deducted at source and, therefore, disallowance of Rs. 4,35,45,789/- was made u/s 40(a)(i) of the Act.

7. The Assessing Officer further found that the assessee has claimed deduction u/s 80IC in respect of Halol and Parwanoo unit on which the assessee has not made any allocation of head office expenses. The Assessing Officer, accordingly, worked out Head Office expenses in terms of total turnover ratio and made disallowance of Rs. 4,29,676/-. Penalty proceedings u/s 271(1)(c) of the Act were separately initiated.

8. Drawing support from various judicial decisions, the Assessing Officer levied penalty of Rs. 1,42,67,839/-.

9. The assessee carried the matter before the Id. CIT(A) but without any success.

10. We find that since the assessee company was under liquidation, relevant documentary evidences could not be produced before the Id. CIT(A). In fact, we are not in a position to know the fate of liquidation proceedings. As the proceedings before the first appellate authority

were not attended by any authorized representative of the assessee, even the ld. DR is not in a position to tell the facts of the case.

11. Therefore, in the interest of justice and fair play, we deem it fit to restore the appeal to the file of the ld. CIT(A). The assessee is directed to furnish necessary evidences and also the status of liquidation process and the ld. CIT(A) is directed to examine the same and decide the issue of levy of penalty u/s 271(1)(c) of the Act afresh after affording reasonable and adequate opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee in ITA No. 2784/DEL/2018 is allowed for statistical purposes.

The order is pronounced in the open court on 01.11.2022 in the presence of the ld. DR.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 01st November, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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