

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 2394/DEL/2019 [A.Y. 2010-11]

M/s Spice Mobility Ltd
19A & 19B, Floor No. 5,
Gloabl Knowledge Park
Sector 125, Noida

Vs.

The C.I.T
[Exemption]
Chandigarh

PAN: AABCM 5619 D

(Applicant)

(Respondent)

Assessee By : Shri Deepesh Jain, CA
Shri R.P. Goyal, CA

Department By : Ms. Kajal Singh, Sr. DR

Date of Hearing : 10.01.2023

Date of Pronouncement : 10.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A), Meerut dated 22.03.2017 pertaining to Assessment Year
2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] amounting to Rs. 2,55,39,651/-.

3. At the very outset, the ld. counsel for the assessee stated that the addition on the basis of which the Assessing Officer/CIT(A) has levied the penalty u/s 271(1)(c) of the Act has been deleted. Therefore, there is no leg to stand for penalty.

4. The ld. counsel for the assessee further explained the reasons for delay in filing the appeal and referred to the affidavit and letter filed for condonation of delay.

5. Though the ld. DR objected for condonation of delay, but fairly conceded that since the quantum has been deleted, penalty has no legs to stand.

6. We have carefully considered the orders of the authorities below and have duly considered the contents of the letter requesting for condonation of delay supported by an affidavit of the Director of the

assessee company. In our considered opinion, technicalities should not come in the way of imparting justice considering the cause for delay. We do not find any malafide on the part of the assessee. Therefore, the delay is condoned.

7. Coming to the merits of the case, assessment was completed u/s 143(3) of the Act vide order dated 28.03.2013 by which disallowance u/s 43B of the Act and disallowance on account of interest was made. Assessment was challenged before the Id. CIT(A) and the Id. CIT(A), vide order dated 22.03.2017, upheld the disallowance u/s 43B of the Act and at the same time, enhanced the income on account of alleged deficiency in maintaining books of amalgamating company.

8. The order of the Id. CIT(A) was challenged before the Tribunal and the Tribunal in ITA No. 2417/DEL/2017 vide order dated 20.12.2019 has held as under:

“14. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The facts show that the Spice Tele Ventures Ltd (amalgamating company) merged with the assessee company (amalgamated company) w.e.f. 01.01.2010. Therefore, it is apparent that income or loss after 01.01.2010 to 31.03.2010 should be included in the revised,- return of the assessee company pertaining to operation of Spice

Teieventures Ltd., According to the assessee, during this period, it has incurred the loss of Rs. 996109880/-. The details of that entity with respect to income and expenditure are submitted for both the periods. The accounts of merged entity were audited accounts, which were maintained under the Companies Act on accrual basis of accounting. Without advancing any reason to not to accept those audited accounts, the Id CIT(A) tried to spread total income earned by that company and total expenditure incurred by that company for whole of the year on 'period basis'. In fact, it is not the case of the revenue that the merged entity was not maintaining its books of account on accrual basis. The assessee has submitted the accounts of that company prior to merger and post merger. The accounting policies were disclosed at para No. 5 in schedule No. 23 oh the annual accounts. In para No. 2 the base for preparation of accounts are mentioned as 'on historical cost convention of accrual basis'. It is also maintained following the accounting policies consistently followed by the company. This fact clearly shows that post merger and prior to the merger of the above company, there is no difference in either standard or any of the accounting policies. We have already held that the company is required to maintain its accounts on accrual basis the allocation of the income and expenditure on time base by the Id CIT(A) is devoid of any merit without finding that the annual accounts maintained, which were subjected to scrutiny by the auditor, board of directors, Hon'ble High Court, Ministry of Corporate Affairs, Registrar of Companies as well as other stack holders. So, the enhancement made by the Id CIT(A) is not in accordance with law. Hence, Ground No. 2 of the appeal of the assessee with respect to the enhancement made by the Id CIT(A) is allowed and the addition of Rs. 75338203/- is deleted!

15. Accordingly, appeal of the assessee is partly allowed.”

9. Since penalty has been levied on the enhancement made by the ld. CIT(A) and since the quantum has now been deleted, we do not find any merit in the levy of penalty and the same is, accordingly, deleted.

10. In the result, the appeal of the assessee in ITA No. 2394/DEL/2019 is allowed.

The order is pronounced in the open court on 10.01.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Ssd/-

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

Dated: 10th January, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	