

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.3492/Del./2017
Assessment Year : 2013-14

Cellcast Interactive India Pvt. Ltd., Vs. DCIT,
C/o Kapil Goel, Advocate, Circle-5(2),
F-26/124, Sector-7, New Delhi.
Rohini,
Delhi.

PAN: AACCC7207J
(Appellant)

(Respondent)

Assessee by: None
Revenue by : Shri Gurpreet Shah Singh, Sr. DR

Date of Hearing : 09.01.2023
Date of Pronouncement : 13.01.2023

ORDER

PER SHAMIM YAHYA, A.M.:

This appeal filed by the assessee is directed against the Order of the Ld. CIT(A)-2, New Delhi, dated 31.03.2017 and pertains to A.Y. 2013-14.

2. The grounds of appeal read as under:-

“Invalid Penalty U/s 271(l)(c) of Rs. 6,58,098/-

1. That on the facts and in the circumstances of the case and in law, Id. CIT-A-2, New Delhi erred in confirming penalty amounting Rs. 6,58,098/- u/s 271(l)(c) without appreciating that Ld. AO has miserably failed to pinpoint the exact head/limb

in which subject penalty is levied for want of which present penalty becomes invalid.

2. That on the facts and in the circumstances of the case and in law, Id. CIT-A-2, New Delhi erred in confirming penalty amounting Rs. 6,58,098/- u/s 271(J)(c) without appreciating that Ld. AO has issued vague and mechanical notice u/s 274 which makes present penalty invalid;

3. That on the facts and in the circumstances of the case and in law, Id. CIT-A- 2, New Delhi erred in confirming penalty amounting Rs. 6,58,098/- u/s 271(1)(c) without appreciating that Ld. AO has not mentioned exact limb in which penalty is levied in impugned penalty order;

4. That on the facts and in the circumstances of the case and in law, Id. CIT-A- 2, New Delhi erred in confirming penalty amounting to Rs. 6,58,098/- , without appreciating that only reason for making addition was difference in creditors, which could not be reconciled due to closure of operations by assessee, which non-reconciliation, and consequential addition in assessment cannot be sufficient for imposing penalty u/s 271 (l)(c).

5. That on the facts in the circumstances of the case and in law, Id.CIT(A)-2, New Delhi erred in confirming penalty amounting to Rs.6,58,098/- u/s 271(l)(c), without appreciating that even additions made in the quantum order as assumptive and presumptive basis has very weak foundation, in eyes of law as highlighted in our reply dated 09.12.2015 and 05.01.2017 respectively filed before AO and CITA.

Prayer/ Relief Claimed

1. To delete the penalty levied of Rs. 6,58,098/-.
2. Any other relief as deemed fit in circumstances of the case.
6. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

3. Brief facts of the case leading to the levy of penalty in this case are that the assessee filed its return of income on 26.09.2013 with total brought forward losses of Rs. 54,87,16,226/- including unabsorbed depreciation. Later, the assessee revised its return of income on 20.02.2015 declaring income of Rs. 4,77,12,227/- with brought forward losses of Rs.38,97,06.040/- and unabsorbed depreciation of Rs.3,23.47,939/-. Assessment in the case of the assessee was completed u/s 143(3) of the Act on 30.10.2015 determining loss at Rs. 38,97,06,040/- and brought forward loss was restricted to Rs.4,98,41,995/- and unabsorbed depreciation to be carried forward Rs.3,23,47,939/-. There were two disallowances made in the assessment order i.e. (i) creditors amounting to Rs. 20,96,496/- and (ii) computer hire charges amounting to Rs.33,372/-. Simultaneously, penalty u/s 271(1)(c) of the Act was initiated for concealing/furnishing inaccurate particulars of income.

4. The assessee did not file any appeal before the Id.CIT(A) against the quantum addition. Upon assessee's appeal, the Id.CIT(A) found that the fact that the assessee has not filed any appeal before the CIT(A) indicates that the assessee has accepted the addition in principle. The Id. CIT(A) proceeded to examine the penalty levied and found that no satisfactory explanation was submitted by the assessee regarding the concealment of income/furnishing of inaccurate particulars of income. Referring to several case laws from the

higher courts, he proceeded to confirm the levy of penalty. Against this order, the assessee has filed appeal before us.

5. We have heard the Id. DR and perused the record. Several notices have been issued to the assessee and the assessee has not responded. Hence we proceed to adjudicate the issue by hearing the Id. DR and perusing the record. We note that before us, the assessee has raised grounds challenging the jurisdiction for levy of penalty by pleading that the AO has failed to point out the exact head/limb under which the penalty is levied and has claimed that it made the penalty invalid. We find that the above ground has not been raised before any of the authorities below nor any evidence in the said notice, without ticking off the relevant limb, has been filed before us. In these circumstances, in the interest of justice, we remit the issue to the file of the Id.CIT(A). The Id.CIT(A) is directed to examine the assessee's claim that the relevant limb in the penalty notice about the charge against the assessee was not specified. After examining the same and the factual veracity thereof, the Id.CIT(A) shall pass an order as per law. Needless to add, the assessee should be granted adequate opportunity of being heard.

6. In the result, this appeal filed by the assessee stands allowed for statistical purposes only.

Order pronounced in the open court on 13.01.2023.

Sd/-

[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Dated, 13th January, 2023

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Copy to:

1. The appellant
2. The respondent
3. Ld. CIT(A) concerned
4. CIT concerned
5. DR ITAT "A" Bench, Delhi
6. Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.