

**INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH "B": NEW DELHI**  
**BEFORE**  
**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.8226/Del/2019  
Asstt. Year: 2006-07

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| Havells India Limited<br>904, 9 <sup>th</sup> Floor, Surya Kiran<br>Building, KG Marg,<br>Connaught Place,<br>New Delhi – 110 001.<br>PAN AAACH0351E | Vs. | ACIT, Circle-1,<br>LTU<br>New Delhi. |
| (Appellant)  |     | (Respondent)                         |

|                       |                            |
|-----------------------|----------------------------|
| Assessee by:          | Shri Divyansh Jain, Adv.   |
| Department by :       | Shri Vipul Kashyap, Sr. DR |
| Date of Hearing       | 18.01.2023                 |
| Date of pronouncement | 23. 01.2023                |

**ORDER**

**PER ASTHA CHANDRA, JM**

1. The appeal by the assessee is directed against the order dated 25.07.2019 of the Ld. Commissioner of Income Tax (Appeals)-22, New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2006-07.

2. The assessee has taken the following grounds of appeal:

*"1. That on the facts and circumstances of the case, the penalty order under section 271(1)(c) of the Act passed by the AO is bad both in the eyes of law and on facts.*

*2. That the Learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)") has grossly erred both in law and on facts in upholding levy of penalty of Rs 13,48,640/- u/s 271(1)(c) of the Act.*

*3. That on the facts and circumstances of the case, penalty order passed u/s 271 (1)(c) is bad in law, being assessment proceedings and order u/s 147 of the Act, is itself null and void in view of notice u/s 148 of the Act issued in the name of non - existing company i.e. M/s Crabtree India Limited which is invalid being not enforceable in law and null & void.*

4. *That on the facts and in the circumstances of the case, the Learned CIT(A) has erred both on facts & in law in upholding levy of penalty without appreciating the fact that Show Cause notice issued u/s 274 r.w.s. 271 of the Act did not explicitly specify under which limb of section 271(1)(c), penalty proceedings has been initiated i.e. either for “concealment of income” or for “furnishing of inaccurate particulars of income”, which makes the notice invalid and penalty order so passed, is bad in law and liable to be quashed.*
  5. *That on the facts and in the circumstances of the case, the Learned CIT(A) erred both in law and on facts in upholding the levy of penalty of Rs. 13,48,640/- without rebutting the claim that there was no concealment or furnishing of inaccurate particulars of income as contemplated u/s 271(1)(c) of the Act as all the particulars / evidences subject matter of penalty was well before the AO and part of the assessment / remand record.*
  6. *That on the facts and in the circumstances of the case, the Learned CIT(A) erred in ignoring the settled law that merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1)(c) of the Act.*
  7. *That on the facts and in the circumstances of the case, the Learned CIT(A) erred in upholding the act of AO of imposing penalty of Rs. 13,48,640/- by holding the appellant as guilty of “concealment” which is contrary to the factum of initiation of penalty in the assessment order by considering the appellant as guilty of “furnishing inaccurate particulars”.*
  8. *That on the facts and in the circumstances of the case, the Learned CIT(A) erred both in law and on facts in upholding the levy of penalty of Rs. 13,48,640/- by arbitrarily and mechanically rejecting the bona-fide explanation given by the appellant as provided in Explanation 1 to Section 271(1)(c) of the Act.*
  9. *That on the facts and circumstances of the case, the Learned CIT(A) erred in law and on fact in upholding the penalty order which would otherwise untenable in law as the judicial pronouncements relied upon are distinguishable on the facts of the assessee case.”*
3. Briefly stated, the assessee company is stated to be engaged in the business of manufacturing of switchgears, electrical goods and bath-fittings etc.. The assessee filed its return for AY 2006-07 on 29.11.2006 declaring income of Rs. 35,80,32,828/-. The case of the assessee was selected for scrutiny. The assessment was completed under section 143(3) of the Income Tax Act, 1961 **(the“Act”)** on 26.12.2008 on total income of Rs.

40,11,27,346/-. However, the assessment was re-opened by issue of notice under section 148 on 26.03.2013 and re-assessment was completed vide the order of the Ld. Assessing Officer ("**AO**") dated 27.03.2014 on total income of Rs. 38,41,26,647/-. The Ld. AO initiated penalty proceedings under section 271(1)(c) of the Act.

3.1 Against the re-assessment order, the assessee went in appeal before the Ld. CIT(A) challenging the additions made by the Ld. AO. The Ld. CIT(A) granted part relief to the assessee vide his order dated 01.12.2016 in Appeal No. 17/14-15/CIT(A)-22, New Delhi. But confirmed the addition of Rs. 40,06,651/- on account of accommodation entries.

3.2 Aggrieved, the assessee carried the matter in appeal before the Tribunal and agitated the addition of Rs. 4,63,258/- made by the Ld. AO on account of alleged accommodation entry from M/s. Saraswati Trading Co. which was confirmed by the Ld. CIT(A). The assessee also challenged the addition of Rs. 35,43,393/- made by the Ld. AO on account of alleged accommodation entries from M/s. Shree Balaji International, M/s. Shree Ganesh Enterprises and M/s. Vee Vee Enterprises which was also upheld by the Ld. CIT(A). The aforesaid additions aggregated to Rs. 40,06,651/-. The Tribunal vide its order in ITA No. 6599/Del/2016 dated 20.10.2022 allowed the appeal of the assessee which resulted in deletion of the aforesaid additions.

4. After the decision of Ld. CIT(A) confirming the addition of Rs. 40,06,651/- on account of accommodation entries, the Ld. AO issued show cause notice under section 271(1)(c) of the Act dated 06.02.2018. During penalty proceedings, the assessee filed reply dated 26.02.2018 which was not found to be tenable by the Ld. AO for the reasons recorded by him in para 5 of the penalty order dated 16.03.2018 which culminated in imposing the penalty of Rs. 13,48,640/- upon the assessee. The appeal of the assessee has been dismissed by the Ld. CIT(A). This has brought the assessee before the Tribunal and all the grounds of appeal relate thereto.

5. We have heard the Ld. Representative of the parties and perused the records. Since the very basis of levy of the impugned penalty does not survive after the decision of the Tribunal in quantum appeal in ITA No. 6599/Del/2016 dated 20.10.2022, deleting the entire addition of Rs. 40,06,651/-, the penalty under section 271(1)(c) of the Act amounting to Rs. 13,48,640/- levied by the Ld. AO and confirmed by the Ld. CIT(A) is hereby deleted.

6. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 23<sup>rd</sup> January, 2023.**

sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
 Dated: 23 /01/2023

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
 ITAT, New Delhi

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