

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. Nos. 162 & 161/Del/2021

निर्धारणवर्ष /Assessment Years: 2010-11 & 2011-12

DCIT, Central Circle : 29, New Delhi.	<u>बनाम</u> Vs.	M/s. Dharampal Satyapal Limited, 98, Okhla Industrial Estate, New Delhi - 110 020.
		PAN No. AAACD0132H
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Shri Satyajit Goel, C. A.;
राजस्वकीओरसे / Department by :	Ms. Sapna Bhatia, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	10/04/20223
उद्घोषणाकीतारीख/Pronouncement on :	18/05/2023

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. These two appeals are filed by the Revenue against different orders of the Id. Commissioner of Income Tax (Appeals)-30, New Delhi

[hereinafter referred to CIT (Appeals)] dated 28.01.2021 for assessment years 2010-11 and 2011-12 in sustaining the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. The Revenue has raised the following common grounds in both these appeals except for the figures:-

“1. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts in deleting the initiation of penalty proceedings vide penalty notice u/s 271(1)(c) on 26.05.2014 while passing assessment order u/s 144(C)/143(3) of the Income Tax Act, 1961 without taking into account that "Mere mistake in language used in penalty notice and nonstriking of the inapplicable portion cannot by itself invalidate the notice." The same was held in the decision of (i) CIT Vs Kausalya and others (Bom) 216 ITR 660 (ii) H.P. State Forest Corpn. Ltd. Vs CIT & Ors. (HP) 267 ITR 285 (iii) CIT Vs Maharaj Krishnan (Del) 246 ITR 327.

2. Whether on the facts & in the circumstances of the case and law, the Ld. CIT(A) erred in law & on facts in deleting the initiation of penalty. proceedings vide penalty notice u/s 271(1)(c) on 26.05.2014 while passing assessment order u/s 144(C)/143(3) of the Income Tax Act, 1961 without taking into account that the assessee company did not raise the issue regarding the specification of limb under which penalty was initiated after the initiation of penalty on 26.05.2014. Even the assessee also responded and compliance to again issued notice u/s 271(1)(c) dated 28.08.2019 by the AO, vide its submission dated 17.10.2019 received in the office on 18.10.2019, on account of confirmation of part additions by the Hon'ble ITAT in the case of M/s Dharampal Satyapal Limited for AY 2010-11 (order passed u/s 144C(4)/143(3) of IT Act, 1961 dated 26.05.2014) This shows that the assessee was clearly known to the fact and was protesting against the penalty notice u/s 271(1)(c) for the concealment of income for the relevant FY 2009-10 i.e. AY 2010-11.

3. Whether on the facts & in the circumstances of the case and law, the Ld. CIT(A) erred in law & on facts in deleting the imposition of penalty amounting to Rs.83,37,597/- in the light of the CBDT Circular No. 25/2015, based on the

decision of Hon'ble Delhi High Court in the case of Nalwa Sons Investment Ltd., without taking into consideration that the facts of the case relating to the decision of Hon'ble High Court and the fact of the circular of CBDT are different from the present case. In the present case the case was assessed u/s 144C(4)/143(3) of IT Act, 1961 at normal income of Rs.189,55,39,637/-, the book profit was arrived at Rs.137,77,57,881/-, vide this office dated 26.05.2014. The Ld. CIT(A) considered the submission of the assessee, as the same was submitted before the Ld. appellate authority, the final income arrived as a result of appeal effect given by the department of the order of Hon'ble ITAT and ignored the fact that the issues on which relief allowed by Hon'ble ITAT was contested by the department before the Hon'ble High Court of Delhi and is still in dispute.

4. Whether on the facts & in the circumstances of the case and law, the Ld. CIT(A) erred in law & on facts in deleting the imposition of penalty amounting to Rs.83,37,597/- ignoring the facts that the Penalty u/s 271(1)(c) of the Income Tax Act, 1961 is leviable, even if Assessee has disclosed NIL income and on verification of the record, it is found that certain income has been concealed or has wrongly been shown, the same was held in the decision of Hon'ble Supreme Court in the case of JCIT Vs Saheli Leasing & Industries Ltd. The Hon'ble Supreme Court of Delhi made it clear in the case of CIT Vs. Gold Coin Health Care Limited that even where the assessed income and returned income both are at loss penalty can be levied under Section 271(1)(c) of the Act.”

3. The ld. Counsel for the assessee, at the outset, submits that since the income was assessed under MAT provisions in the consequential order giving effect to the order of the Tribunal, penalty provisions under section 271(1)(c) of the Act are not attracted. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Nalwa Sons Investments Ltd. [(2010) 327 ITR 543 (Del)]. Reliance was also placed on the decision of the Delhi Bench of the Tribunal in the case

of M/s. Samin Tekmindz India Pvt. Ltd. Vs. ACIT in ITA. No. 2282/Del/2019 dated 5.08.2019. Ld. Counsel submits that the issue of as to whether when the income of the assessee has been assessed under MAT provisions can there be a penalty under section 271(1)(c) of the Act has been decided by the jurisdictional High Court holding that no penalty under section 271(1)(c) of the Act could be imposed on the additions/disallowances made while computing income under normal provisions of the Act.

4. On the other hand, the ld. DR supported the orders of the Assessing Officer.

5. Heard rival submissions perused the orders of the authorities below and the decisions relied on. In these cases assessments for the assessment years 2010-11 and 2011-12 were completed under section 144C(4)/153A/143(3) of the Act by order dated 26.05.2014 determining the income under normal provisions of the Act at Rs.189,55,39,637/-, Rs.202,02,86,695/- and book profits under section 115JB of the Act at Rs.137,77,57,881/- and Rs.163,90,47,285/- respectively. As the income under normal provisions of the Act is more than the income declared under book profits the Assessing Officer assessed the income of the assessee under normal provisions of the Act while computing the assessments under section 144C(4)/153A/143(3) of the Act dated 26.05.2014 for the assessment years 2010-11 and 2011-12.

6. Assessee preferred appeals before the ld. CIT (Appeals) and also before the Tribunal and the Tribunal by order dated 18.04.2019 in ITA. Nos. 3882 and 3883/Del/2016 deleted certain additions/disallowances made in the assessment order while computing the income under normal provisions of the Act. The Assessing Officer passed consequential orders

dated 15.10.2019 and 26.09.2019 for the assessment years 2010-11 and 2011-12 determining the income under normal provisions of the Act at Rs.43,06,50,302/- and Rs.34,33,36,856/- and book profits under section 115JB of the Act at Rs.137,77,57,881/- and Rs.163,90,47,285/- respectively. Since the tax payable under section 115JB of the Act on book profits is more than the tax payable on income under normal provisions of the Act the Assessing Officer assessed the income under section 115JB of the Act. Subsequently, the Assessing Officer passed penalty orders dated 21.10.2019 and 23.10.2019 for the assessment years 2010-11 and 2011-12 levying penalty under section 271(1)(c) of the Act on the income assessed under normal provisions of the Act and with reference to the additions/disallowances made while computing the income under normal provisions of the Act.

7. The assessee preferred appeals before the Id. CIT (Appeals) contending that no penalty is livable when the assessed income is finally made under the provisions of section 115JB of the Act. The Id. CIT (Appeals) following the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Nalwa Sons Investments Ltd. (supra) held that imposition of penalty under section 271(1)(c) of the Act is not sustainable.

8. We observe that the Tribunal in the case of M/s. Samin Tekmindz India Pvt. Ltd. Vs. ACIT (supra) following the decision of the jurisdictional High Court in the case of CIT Vs. Nalwa Sons Investments Ltd. (supra) deleted the penalty levied under section 271(1)(c) of the Act under identical circumstances observing as under:-

“9. Learned Authorised Representative vehemently stated before us that cash payments have been made for purpose of purchase of Silver from MMTC to extent of Rs.24,24,212/- and balance payment of Rs.9,66,500/- is towards reimbursement of travel expenses to employees of company. Details of cash payment are placed at Page. 1 of

Supplementary paper book 2. Disallowance is merely on payments have been made in contravention of section 40A(3) of The ground that Act. It is relevant to submit that aggregate cash payment of Rs. 24,24,212/- has been made to MMTTC which is Government of India undertaking for purchase of silver and as such provisions of section 40A(3) read with Rule 6DD are not applicable. It may be appreciated that since payment is directly made to Central government undertaking, same is to be considered as legal tender. He further relied up on judicial precedents of M.R. Soap (P.) Ltd. v. IAC [1988] 32 TTJ (Delhi) 505, Kamta Prasad Mittal v. DCIT (ITAT Lucknow) (ITA.No. 1 45/LKW/15)(dated 21/02/18) where cash Payment made to BSNL cannot be disallowed u/s 40A(3). CIT v Devendrappa M. Kalal [2013] 219 Taxman 122 (Kar)Hence he submitted that this being well established principle, there is no case of any disallowance u/s 40A(3) read with rule 6DD(b) of the Act.

10. With regards to reimbursement of expenses to extent of Rs.9,66,500/- to employees, it is submitted that such reimbursement was towards accumulated bills of tour and travels and individual bills being less than Rs. 20,000/-, there is no case of breach of provisions of section 40A(3) of The Act. In this connection, reference may be made to decision of Delhi tribunal in case of ACIT v. Nirman Associates (Del ITAT) (ITA No. 4272/D/11). In light of facts and legal position clarified above, disallowance u/s 40A(3) is not sustainable and may, kindly be deleted.”

9. Issue being identical the ratio of the decision of the jurisdictional High Court in the case of CIT Vs. Nalwa Sons Investments Ltd. (supra) squarely applies to the facts of the assessee’s case. Thus respectfully following the decision of the jurisdictional High Court we sustain the order of the Id. CIT (Appeals) in deleting the penalty levied under section 271(1)(c) of the Act for both these assessment years i.e. 2010-11 and 2011-12.

10. In the result, appeals of the Revenue, are dismissed.

Order pronounced in the open court on : 18/05/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

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

Dated : 18/05/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI/
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	16.05.2023
Date on which the typed draft is placed before the dictating Member	17.05.2023
Date on which the typed draft is placed before the Other Member	18.05.2023

Date on which the approved draft comes to the Sr. PS/PS	18.05.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	18.05.2023
Date on which the fair order comes back to the Sr. PS/PS	18.05.2023
Date on which the final order is uploaded on the website of ITAT	18.05.2023
Date on which the file goes to the Bench Clerk	18.05.2023
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	