

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “C” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2342/DEL/2022  
Assessment Year 2015-16

Jindal ITF Ltd. 28, Najafgarh Road Post Office- Ramesh Nagar New Delhi.	v.	DCIT Circle-13(2) Delhi.
TAN/PAN: AABCJ9263C		
(Appellant)		(Respondent)

Assessee by:	Shri Vinod Kumar Bindal CA Ms. Rinky Sharma Adv.		
Department by:	Shri Anuj Garg Sr.DR		
Date of hearing:	08	08	2023
Date of pronouncement:	24	08	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXIII, New Delhi [‘CIT(A)’ in short] dated 25.07.2022 arising from the penalty order dated 29.06.2018 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty of Rs.1,78,86,735/- towards disallowance on account of premium conversion to Compulsorily Convertible Debentures (CCDs) amounting to Rs.5,26,23,522/-. The aforesaid disallowance has resulted in reduction of returned loss to that

extent.

3. When the matter was called for hearing, the Id. counsel for the assessee pointed out that the total income returned by the assessee at a loss of Rs.210,33,45,133/- under the normal provisions of the Act and book loss under Section 115JB of the Act at Rs.150,64,75,547/- was brought down and assessed at Rs.183,92,07,084/- and Rs.124.23,37,487/- respectively while framing the assessment order under Section 143(3) of the Act.

4. Having regard to the losses assessed at a lower figure under normal provision and Section 115JB of the Act, the addition/disallowance under normal provisions would not invite penalty under Section 271(1)(c) of the Act.

5. The CBDT Circular No. 25/2015 dated 31<sup>st</sup> December, 2015 has addressed the issue directly. The relevant CBDT Circular is reproduced hereunder:

*“CIRCULAR NO. 25/2015*

*F.No.279/Misc./140/2015/IT.J  
Government of India  
Ministry of Finance  
Central Board of Direct Taxes*

*New Delhi, 31<sup>st</sup> December, 2015*

*Subject: Penalty u/s. 271(1)(c) wherein additions/disallowances made under normal provisions of the Income Tax Act, 1961 but tax levied under MAT provisions u/s 115JB/115JC, for cases prior to AY. 2016-17 - reg.-*

*Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act 2000 with effect from 1-4-2001.*

*2. Under clause (iii) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has*

*been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed*

*3. In this context, Hon'ble Delhi High Court in its judgment dated 26.8.2010 in ITA No. 1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty under section 271(1)(c) of the Act could not be imposed with reference to additions /disallowances made under normal provisions. The judgment has attained finality.*

*4. Subsequently, the provisions of Explanation 4 to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT w/s 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f. 01.04.2016.*

*5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits w/s 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty w/s 271(1)(c) of the Act, will depend on the nature of adjustment.*

*6. The above settled position is to be followed in respect of section 115JC of the Act also.*

*7. Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.*

*DCIT (OSD) (ITJ),  
CBDT, New Delhi"*

6. The above noted CBDT circular is self speaking and self explanatory. The assessment year in the present case is Assessment Year 2015-16 and therefore, penalty under Section 271(1)(c) cannot be imposed owing to the fact that Explanation-4 to Section 271(1)(c) is applicable prospectively from Assessment Year 2016-17 and not prior thereto. We also simultaneously take

note of the judgment rendered by the Hon'ble Delhi High Court in the case of *Pr.CIT vs. National Textiles Corporation Ltd. (2023) 116 CCH 0319 (Del)* wherein it was observed that where on facts, no advantage accrued to the assessee owing to alleged wrong claims given the fact that it has burgeoning unabsorbed losses, the *bona fides* of the assessee stands proved for the reason that it could not have gained anything by making alleged wrong claims.

7. There is yet another reason to agree with the contentions of the assessee for exoneration from the clutches of penalty proceedings under Section 271(1)(c) of the Act. The assessee in the instant case *suo motu* discovered certain mistakes crept in the computation of the premium payable on redemption and therefore, the assessee acting *bona fide* informed the Assessing Officer vide letter dated 07.12.2017 and stated that 'during the assessment proceedings it came to our notice that the assessee under the revised return has mistakenly claimed premium of Rs.38,82,91,683/- on redemption / conversion of compulsorily convertible debentures (CCDS) against correct figure of Rs.33,56,68,161/- owing to clerical mistake. A revised calculation sheet was also placed before the Assessing Officer.' The loss was assessed at the revised premium amount based on information voluntarily furnished by the assessee but however penalty for such excessive claim was initiated on the ground that higher claim was a deliberate act of the assessee. We do not see much substance in such rationale. The assessee, as noted, has burgeoning losses at its disposal and thus no inducement to claim excessive losses without any corresponding benefit cannot be visualized. The *bona fides* of the assessee stands largely proved.

8. Thus in the light of the CBDT Circular and the judicial dicta, we find merit in the plea of the assessee for exoneration from penalty under Section 271(1)(c) of the Act. We thus set aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty in question.

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

**Order was pronounced in the open Court on 24/08/2023.**

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

DATED: /08/2023

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**