

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 9508/Del/2019
Assessment Year: 2012-13**

Sunborne Energy Services India Pvt. Ltd., Unit-816, 8th Floor,
Asotech Business Cresterra,
Tower-1, Sec. 135, Noida.
PAN: AANCS0054N
(Appellant)

Versus DCIT, Circle 24(2),
New Delhi.
(Respondent)

Assessee by : Sh. Divesh Kalra, Advocate
Revenue by : Sh. Anuj Garg, Sr. DR

Date of hearing : 28.11.2023
Date of pronouncement: 07.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the assessee against order dated 21.10.2019 of learned Commissioner of Income-tax (Appeals)-8, New Delhi, confirming the penalty imposed of Rs.18,02,400/- under section 271(1)(c) of the Income-tax Act, 1961.

2. Briefly, the facts are, the assessee is a resident corporate entity stated to be engaged in the business of developing power projects derived from non-conventional source of solar energy. For the assessment year under dispute, the assessee filed its return of income declaring income of Rs.53,08,940/- under the normal provisions of the Act. Whereas, the assessee declared book profit of Rs.5,39,12,620/- under section 115JB of the Act.

3. While completing the assessment, the Assessing Officer made certain additions/disallowances, which enhanced the income to Rs.2,17,72,730/- under the normal provisions of the Act and Rs.6,59,49,050/- under section 115JB of the Act. Since the tax payable on the income computed under the normal provisions was less than the tax payable on the book profit computed under section 115JB of the Act, the Assessing Officer ultimately computed the tax liability of the assessee under section 115JB of the Act. On completion of the assessment, as aforesaid, the Assessing Officer also initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs.18,02,400/-.

4. Against the aforesaid order imposing penalty, the assessee preferred an appeal before learned first appellate authority. Assessee's case before learned first appellate authority was to the effect that since, the additions/disallowances were made under the normal provisions of the Act, whereas, the Assessing Officer has ultimately assessed the income of the assessee under section 115JB and levied tax on such income, penalty under section 271(1)(c) could not have been imposed. In support of such contention, the assessee relied upon the decision of Hon'ble Delhi High Court in case of CIT vs. Nalwa Sons Investments Ltd. (2010) 194 Taxman 387 (Delhi) and circular No. 25 of 2015 dated 31.12.2015 issued by the Central Board of Direct Taxes (CBDT). Learned first appellate authority, however, was not convinced with the submissions of the assessee. Though, he accepted the position that Explanation-4 to sub-section (1) of section 271 of the Act would apply prospectively from 01.04.2016, however, he was of the view that the said Explanation-4 would apply to all proceedings pending as on 01.04.2016. Accordingly, he proceeded to uphold the penalty imposed.

5. We have considered rival submissions and perused materials on record. So far as the factual position relating to the issue in dispute is concerned, it is evident that the Assessing Officer has completed the assessment by determining the tax liability of the assessee on the book profit computed under section 115JB of the Act. Whereas, the penalty imposed under section 271(1)(c) of the Act is based on additions/disallowances made under the normal provisions of the Act. While interpreting the provisions of section 271(1)(c) of the Act, Hon'ble jurisdictional High Court in case of CIT vs. Nalwa Sons Investments Ltd. (supra) has held that when the tax payable on income computed under the normal provisions of the Act is less than tax payable under the deeming provisions of section 115JB of the Act, then penalty under section 271(1)(c) of the Act could not have been imposed with reference to additions/disallowances made under normal provisions of the Act. To overcome the effect of the aforesaid judgment, section 271(1) was amended with insertion of Explanation-4 by Finance Act, 2015 w.e.f. 01.04.2016, which provided for imposition of penalty under section 271(1)(c) of the Act even on tax liability computed on the book profit

determined under section 115JB or section 115JC of the Act. However, the issue, which arises for consideration is, whether amendment brought to section 271(1) of the Act by way of Explanation-4 would apply prospectively or it would have retrospective effect and could be made applicable to cases prior to assessment year 2016-17.

6. Vide circular No. 25/2015 dated 31.12.2015, the CBDT clarified that prior to 01.04.2016, where 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 profit under section 115JB of the Act, then penalty under section 271(1)(c) of the Act is not attracted with reference to the additions made under the normal provisions. The legal position on the issue stands sufficiently clarified by the aforesaid circular issued by CBDT. Thus, in our view, since, in the instant case, assessment year involved is 2012-13, which is prior to assessment year 2016-17 wherefrom Explanation-4 to section 271(1) is applicable, no penalty under section 271(1)(c) could have been imposed, even though the penalty proceedings were pending as on 01.04.2016. In our view, learned first appellate authority has

misinterpreted the extant CBDT circular while coming to the conclusion that the amended provisions of section 271(1) of the Act would apply to the penalty proceedings pending as on 01.04.2016. Thus, in final analysis, we hold that penalty under section 271(1)(c) of the Act in the facts of the present appeal is unsustainable. Accordingly, the penalty is deleted.

7. In the result, appeal is allowed.

Order pronounced in the open court on 07.12.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd.0

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 07.12.2023
*aks/-