

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 763/Kol/2023
Assessment Year: 2013-14

Aditya Arav Dev-Cons Co Private Limited Kali Mitra Lane Kolkata - 700006 [PAN : AAHCA8209M]	Vs	Dy. Commissioner of Income Tax, Circle - 1, Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.N. Keshari, FCA
Revenue by :	Shri Archana Gupta, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 16/04/2024
घोषणा की तारीख /Date of Pronouncement: 22/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 29/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

2. Only grievance of the assessee is against the finding of the Id. CIT(A) confirming the penalty of Rs.14,21,776/- levied by the Id. Assessing Officer u/s 271(1)(c) of the Act.

3. At the outset, the Id. Counsel for the assessee submitted that the impugned penalty has been levied on the additions made on estimate basis and there is no specific finding for making the addition that the assessee has concealed particulars of income or furnished inaccurate particulars of income.

Per contra the ld. D/R, vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the material placed before us. We observe that the assessee is a private limited company engaged in the civil constructions business. Return for Assessment Year 2013-14 furnished on 27/09/2013 declaring income of Rs.94,57,450/-. During the course of scrutiny proceedings carried out after selecting the case through CASS and validly serving statutory notices, the ld. Assessing Officer examined the books of accounts and other details. The ld. Assessing Officer noticed that the assessee had claimed direct expenses of Rs.4,60,12,179/- paid to sub-contractors. Information about the genuineness of the transactions was examined by issuing notice u/s 133(6) of the Act to 22 sub-contractors. Few replies were received and there were certain mis-match in the closing balances with the sub-contractors. However, ld. Assessing Officer not making addition specifically for the difference in the figures or any other information received in compliance to notice u/s 133(6) of the Act and proceeded to make an *ad hoc* disallowance @10% of the total sub-contract expenses and made addition of Rs. 46,01,218/-. Though there were certain other additions but the impugned penalty has been levied on the *ad hoc* disallowance of sub-contract expenses.

4.1. Admittedly, the penalty has been levied on addition made estimate basis and no specific observation of the ld. Assessing Officer is available on record which could indicate that for arriving at the amount of addition any reference has been made towards furnishing of inaccurate particulars of income by the assessee or concealing

particulars of income. It has been consistently held by various judicial forums that if an addition has been made purely on estimate basis, then penalty u/s 271(1)(c) of the Act is unjustified. We draw reference from the following decisions:-

- CIT VS. Subhash Trading Co. 1996-131 CTR (Gujarat) 121.
- Naresh Chandra Agarwal Vs. CIT 2013-237 CTR 514 (Allahabad) Lucknow Bench.
- CIT Vs. Arjun Prasad Ajit Kumar 2008 - 214 CTR Allahabad 355 (U.P.).
- CIT Vs. Bijay Kr. Jain 325 ITR 378 (Chhattisgarh).
- CIT Vs. Modi Industrial Corporation 2010 - 34 DTR 158 (Punjab Haryana)
- CIT Vs. Sangrur Vanaspati Ltd. 2008-303 ITR 53 (Punjab- Haryana)
- M/s Amitabh Cons. Pvt. Ltd. (PAN - AAECA5404H) Vs. ACIT, Circle 2, Hazaribag ITA No. - 142/RAN/2016 ITAT (Ranchi). (Copy of appellate order attached.)

6. Considering the ratio laid down by various Courts, the Id. D/R, having failed to controvert the facts that the impugned penalty is levied on estimate basis, we are inclined to hold in favour of the assessee. Finding of the Id. CIT(A) is set aside and the penalty levied u/s 271(1)(c) of the Act is deleted.

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

Order pronounced in the Court on 22nd April, 2024 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 22/04/2024
SC.S.P.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata