

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.603 /DEL/2024  
(Assessment Year: 2016-17)**

Benny Impex Pvt. Ltd.,  
B-209, Naraina Industrial Area,  
Delhi – 110 028.

vs.

DCIT, Circle 4 (2),  
New Delhi.

**(PAN : AAACB5411H)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri O.P. Aggarwal, Advocate  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 02.05.2024  
Date of Order : 03.05.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 30.12.2023 for the assessment year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the order as framed by the Ld. CIT (A) is against law & facts.

2. Because Id. CIT (A) has erred while confirming penalty U/Sec 271(1)(c) on a mere disallowance of cash business expenses of Rs.2,25,148/- by invoking provisions of Sec 40(A)(3) of the Income Tax Act.

3. Because even otherwise mere disallowance of expenses is not concealment as per decision of CIT vs. Reliance Petro Products 322 ITR 158 (SC).

4. Because addition made U/S 40(A)(3) are deeming provision and it may not be extended to the penalty proceedings.

5. Because even otherwise here is no adverse finding whatsoever regarding disallowance of business expenses incurred by the 'A' except invoking provision sec 40(A)(3) of the Income Tax Act while making addition of cash expenses amounting to Rs.225148/-."

3. In this case, originally the AO made additions as under :-

(i)	Addition u/s 14A	Rs.16,65,333/-
(ii)	Addition u/s 40A(3)	Rs. 2,25,148/-

The matter went upto ITAT, New Delhi and ITAT upheld the disallowance on account of addition u/s 40A(3) of Rs.2,25,148/-. AO levied the penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.1,72,227/-. Ld. CIT (A) confirmed the penalty order.

4. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

5. Ld. Counsel for the assessee pleaded that disallowance has been done in this case under deeming provisions and no penalty is liable to be levied on this account. In this regard, he referred to the decision of Hon'ble Madras High Court in the case of CIT vs. MSK Constructions (P) Ltd. (2008) 296 ITR 18 (Madras) for the following proposition :-

"In the instant case, the Tribunal after going through the records observed that the disallowance of interest under section 43B of the Act does not amount to concealment of income and that when there is no tax payable, penalty could not be levied. We, therefore, find no illegality or infirmity in the order of the Tribunal in deleting the penalty. Hence, finding no substantial question of law arising for our consideration, these appeals are dismissed. No costs. Consequently, MP. No.1 of 2007 is closed."

Furthermore, ld. Counsel for the assessee submitted that reliance is also placed on the decision of Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products 322 ITR 158 (SC).

6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

7. Upon careful consideration, we find that in this case, assessee does not deserve to be visited with the rigours of penalty under section 271(1)(c) of the Act. The case laws cited above duly supports the case of the assessee. Furthermore, the conduct of the assessee is not contumacious. Accordingly, relying on the precedent as above, we delete the penalty.

8. In the result, this appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 3<sup>rd</sup> day of May, 2024.**

**Sd/-  
(SUDHIR PAREEK)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 3<sup>rd</sup> day of May, 2024  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**