

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.2884/Del/2017  
(ASSESSMENT YEAR 2010-11)**

Dy. CIT Central Circle-18 New Delhi	Vs.	M/s PACL Ltd. 7 <sup>th</sup> Floor, Gopal Dass Bhawan 28 Barakhamba Road New Delhi PAN:AAACP4032A
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Respondent by	Shri Dharm Veer Singh, CIT-DR

Date of Hearing	07/05/2024
Date of Pronouncement	12/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi [“Ld. CIT(A)”, for short], dated 28/02/2017 for Assessment Year 2010-11.

2. The case was posted for hearing on 10/02/2020, none appeared on behalf of the assessee and, subsequently, several RPAD notices were issued and posted for hearing on 20 occasions the case was posted for hearing but none appeared on behalf of the assessee. Today, when the case was called for hearing, none appeared on behalf of the assessee even though RPAD issued to the assessee and the same was return 'left' and the RPAD notices were return un-served. We proceed to hear the appeal with the assistance of the Ld. DR. The Ld. DR brought to our notice relevant facts from the order passed u/s 271(1)(c) of the Act. the Ld. AR submitted that there was a survey conducted u/s 133A of the Act on the business premises of the assessee on 22/03/2010, based on the findings of the above survey action the additions made in the assessment proceedings are as under:-

(i) Trading addition	Rs.10,00,00,000/-
(ii) Addition on account of disallowance of land/farm development expenses	Rs.1,71,54,550/-
(iii) Addition on account of disallowance brokerage/commission expenses	Rs.22,64,08,533/-

Accordingly, the penalty proceedings u/s 271(1)(c) of the Act were initiated and notices were issued and served on the assessee. In response, the assessee submitted that the issue under consideration is pending before the Hon'ble ITAT, however, Assessing Officer rejected the same and proceeded to levy penalty u/s 271(1)(c) of the Act amounting to Rs. 12,51,51,671/- which is 100% of the tax sought to be evaded.

**3.** Aggrieved with the above order, the assessee preferred appeal before the Ld. CIT(A) and filed the detailed submissions as under:-

*“Thus out of four items for which the AO had initiated penalty proceedings u/s 271(1) (c) of the I.T. Act, one of the items had been deleted in total by the Ld. CIT (A). In respect of two items, the additions or disallowances made on estimated basis have been partly confirmed for reasons such as lack of PAN no or not mentioning the state where the work was carried out or not able to justify the claim of expenses. As far as fourth item is concerned, it was in respect of disclosure of Rs. 35 crore made during the course of survey operations.*

*Taking this item a disclosure of Rs. 35 crore made during the course of survey, the assessee offered this income in its return of income. A concealment occurs when an income is not disclosed in the return of income. In respect of Rs. 35 crores the income had been disclosed in return of income and therefore there is no concealment of income or furnishing of inaccurate particulars. In the scheme of Section 271(1) (c), once an amount is offered for taxation then there cannot be concealment of income. Only when the law states that there is a deemed concealment then penalty for such deemed concealment can be levied. This is clear from reading of Explanation -5 and Explanation -Sa to Section 271(1) (c) where in a case where a search u/s 132 of the LT. Act was carried out and the undisclosed assets were found and the assessee declared the assets in its return of income, penalty Section 271(1) (c) could be levied because of the deeming*

*provision mentioned in these two explanations. In this particular case no such search was carried out and therefore Explanation-5 and 5a have no application. Therefore in respect of these 35 crores the penalty proceedings are required to be dropped as there was no concealment of income.*

*Regarding the other two items of expenditures ie. land/farm development expenses and brokerage commission expenses the additions were made on adhoc basis without a finding that the expenses were inflated or fictitious. The additions were made are adhoc basis without any such finding. Before the Ld CIT (A) the assessee was unable to produce PAN No. of certain persons or the state where they worked. But the PAN Nos. of all the persons to whom payment were made are available with the assessee. On the payments TDS had been deducted and paid to the credit of the Government. Thus the identity out of persons cannot be doubted. The question is as to whether any work was done by them. Work has certainly been done or tax would not have been deducted. It is a settled law that penalty proceedings are different from assessment proceedings and details not produced before the A.O. and CIT (A) can be produced at the time of penalty proceedings and the AO has to be examine these evidences. In this connection, reference may be made to the ratio laid down in the following cases:*

- i) JK Jajoo v CIT 181 ITR 410(MP)*
- ii) CII v Ajay Hari Dalmia 157 ITR 145 (Del)*
- iii) Cafco Syndicate Shipping Company 294 ITR 134 (Mad)*
- iv) Jain Bros v Union of India 771 ITR 107 (SC)*
- v) Valmikhbhai H. Patel 280 ITR 487 (Guj)*

*As far as brokerage/commission are concerned, all the details are available with the assessee and the vouchers for the payment for brokerage and commission also exist. All the PAN nos are available and tax has been deducted at source. There is no reason to doubt the genuineness of the expenses. Penalty proceedings are separate from assessment proceedings. Material which was not produced during the assessment or appeal could be produced at the time of penalty proceedings and the Ld AO has to take cognisance of this material before deciding the proceedings of penalty u/s 271(1) (c) of the II Act.*

*Further the disallowances are on adhoc basis. It is a settled issue on the basis of pronouncements of various High Courts and Supreme Courts that*

*the disallowances which are made on estimated basis does not lead to the concealment of income. In this particular case nothing has been concealed and it is also not a case of submission of inaccurate particulars of income. It is therefore requested that the evidence which was not produced at the time of assessment or appeal should be admitted and examined by the Ld. AO Penalty proceeding should accordingly be dropped, as there is no concealment of income or submission of inaccurate particulars".*

**4.** After considering the detailed submissions of the assessee and assessment order, the Ld. CIT(A) partly granted relief to the assessee by observing as under:-

*"4.4 I have carefully considered assessment order, penalty order under appeal, grounds of appeal and statement of facts. The objections raised in the grounds of appeal by the appellant, are discussed as under:-*

*(i) In the case of the assessee, survey action u/s 133 of the act, was conducted at the business premises and certain incriminating documents, were impounded.*

*Accordingly, in the assessment proceedings, the assessee was required to submit the details/ explanation/ justification in respect of the same. After considering the details filed and explanation submitted by the assessee, the A.O. made the following additions for the detailed reasons given in the assessment order u/s 143(3) of the Act, dated 20.3.2013:*

<i>(a) Addition on account of disallowance of land/farm development expenses</i>	<i>Rs.1,71,54,550/-</i>
<i>(b) Addition on account of disallowance of Brokerage/commission expenses</i>	<i>Rs. 22,64,08,533/-</i>
<i>(c) Trading addition</i>	<i>Rs. 10,00,00,000/-</i>
<b>Total</b>	<b>Rs. 34,35,63,083/-</b>

*The A.O. initiated the penalty u/s 271(1)(c) of the Act, for concealing the particulars of income/ furnishing inaccurate particulars of income and also issued show cause notice u/s 271(1)(c) of the Act, along with the assessment order.*

**(ii)** Aggrieved by the above additions/ disallowances, the appellant filed an appeal before the CIT(A)-30, New Delhi and vide order dated 13.6.2013 in appeal No. 116/12- 13/1142, partly confirmed the additions/disallowances and same is summarized as under:

**(a)** Reduced addition on account of disallowance of land/ farm development expenses Rs. 18,21,087/-

**(b)** Reduced addition on account of disallowance of brokerage /commission expenses Rs.1,63,80,358/-

**Total** :Rs.1,82,01,445/-

However, the addition of Rs. 10,00,00,000/-, on account of trading addition, has been deleted by Ld. CIT(A).

**(iii)** Subsequently, the A.O. issued show cause u/s 271(1)(c) of the Act, on 21.11.2014 and written submissions were furnished. However, these submissions did not find favour with the A.O. for the detailed reasons given in para 6 at page 4 of the penalty order. The A.O. has also reproduced the observation of the Ld. CIT(A) in para 7, for confirming the additions/ disallowances, as appellant failed to bring on record full facts regarding cash payments and also failed to produce the alleged parties, to whom the alleged payments have been made.

In view of the above, A.O. was of the opinion that the assessee has deliberately concealed the income, by inflating the expenses, for which no proper explanation/ evidences were furnished in the assessment proceedings as well as in the penalty proceedings. Accordingly, A.O. imposed minimum concealment penalty of Rs.12,51,671/-. u/s 271(1)(c) of the Act, vide order dated 05.03.2015, on the additions/disallowances confirmed by the Ld. CIT(A) to the extent of Rs.36,82,01,445/-. However, after appeal effect, the total additions/disallowances confirmed by the Ld. CIT(A) are to the extent of Rs.1,82,01,445/-, as against the total additions/disallowances made at Rs.34,35,63,083/-, in the assessment order.

**In view of the above, it is clear that the A.O. has prima facie wrongly taken the amount of concealed income for**

***determining the minimum penalty @ 100% on tax sought to be evaded. In these facts and circumstances, A.O. is directed to rectify the mistake, by passing a suitable order u/s 154/271(1)(c) of the Act.”***

**5.** Aggrieved with the above order, the Revenue is in appeal raising the following grounds of appeal:-

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by holding that the AO has wrongly taken the amount of concealed income for determining the minimum penalty despite the fact that the AO has discussed the reasons for imposing penalty on the non voluntarily undisclosed/surrendered amount of Rs. 35 crores.*

*2. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.*

*3. That the grounds of appeal are without prejudice to each other.*

*4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

**6.** The Ld. DR objected to the findings of the Ld. CIT(A) and submitted that the Assessing Officer has brought on record, the amount of concealment of income and imposed a penalty on the non voluntarily undisclosed/surrendered amount of Rs.35 Crores. He submitted that the Ld. CIT(A) has granted relief to the assessee based on the findings of the Ld. CIT(A) in the quantum proceedings wherein the additions were reduced to 1,82,01,445/-. Therefore, the penalty also should be imposed on the above

reduced disallowed amount. The Ld. DR objected to the above findings and submitted that the assessee has not disclosed voluntarily to the extent of Rs.35 Crores and penalty has to be imposed on the total undisclosed amount. He supported the penalty levied by the Assessing Officer.

**7.** Considered the submissions of the Ld. DR and material placed on record, we observed that based on the survey proceedings, the assessment was completed considering the various additions made by the Assessing Officer in 143(3) proceedings and the addition/disallowances were to the extent of Rs.34,35,63,083/-. However, we observed that the assessee filed an appeal before the Ld. CIT(A)-30, New Delhi and vide order dated 13/06/2013, the Ld. CIT(A) partly confirmed the additions/disallowances to the extent of Rs.1,82,01,445/-.

**8.** After considering the findings of the Ld. CIT(A), the additions proposed in the quantum proceedings was substantially reduced by the Ld. CIT(A) in appellate proceedings (quantum appeal) to the extent of Rs.1,82,01,445/-, therefore, in our considered view, the effective concealed/undisclosed income by the assessee is only to

the extent of Rs.1,82,01,445/-, therefore, the penalty also should be levied on the basis of above findings, therefore, we do not see any reason to disturb the findings of the Ld. CIT(A). Accordingly, appeal filed by the Revenue is dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 12<sup>th</sup> June, 2024.

Sd/-

**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated:12/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI