

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1337/MUM/2024  
(Assessment Year: 2010-2011)**

**ITA No. 1338/MUM/2024  
(Assessment Year: 2011-12)**

**&**

**ITA No. 1339/MUM/2024  
(Assessment Year: 2012-2013)**

**System A D Solution India Pvt. Ltd.,**  
Hex, 231/1 Umdan House,  
Near Baradia Hotel, B/H  
Kalina Church, Santacruz (East),  
Mumbai - 400029  
[PAN: AACAS6006R]

.....

**Appellant**

**Joint Commissioner of Income Tax,  
Circle 11(2)(2), Mumbai,  
Aaykar Bhavan, Mumbai**

Vs

.....

**Respondent**

**Appearance**

For the Appellant/Assessee : Shri Vimal Punmiya  
For the Respondent/Department : Shri Avinash Baburao Karpe

**Date**

Conclusion of hearing : 20.06.2024  
Pronouncement of order : 26.06.2024

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**ORDER**

**Per Bench**

1. These are 3 appeals pertaining to Assessment Years 2010-11, 2011-12 and 2012-2013 preferred by the Assessee against 3 separate orders, each dated 28/02/2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)']. Since the appeals involve common issues the same were heard together and are being disposed by way of a common order.

**ITA No. 1337/Mum/2024 (Assessment Year 2010-11)**

2. We would first take up appeal for the Assessment Year 2010-11 which has been preferred by the Assessee challenging the order, dated 28/02/2024, passed by the CIT(A), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 28/03/2018, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')
3. The Assessee has raised following ground of appeal:
  - "1. *The Ld. CIT(A) erred in confirming the penalty of Rs. 21,80,057/- u/s 271(1)(c) for concealment of particulars of income.*"
4. The relevant facts in brief are that the Appellant is a company engaged in the business of acoustic sound systems for theatres, broadly covered under works contract. For the Assessment Year 2010-11, the Appellant did not file return of income under Section 139(1) of the Act. Subsequently, notice was issued to the Appellant under Section 148 of the Act and proceedings under Section 147 of the Act were initiated. During the course of the proceedings the Appellant filed return of income on 05/03/2015 declaring total income of INR 41,44,614/-. Vide Assessment Order dated 26/03/2015, the Assessing Officer completed the assessment under Section 143(3) read with Section 147 of the Act by rejecting the books and estimation gross profits @15% of the total receipts. The taxable income of the Appellant was assessed at INR 87,93,386/-. The Assessing Officer also initiated penalty proceedings under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
  - 4.1. Meanwhile, in the quantum appeal preferred by the Appellant, the Commissioner of Income Tax (Appeals)-18, Mumbai, vide combined order dated 23/11/2017 for the Assessment Years 2010-11 & 2011-12, directed the Assessing Officer to estimate the income of the

Appellant @8% of gross receipts. As a result, the assessed income was revised to INR 46,89,810/- as against the total income of INR 41,44,614/- declared by the Appellant.

- 4.2. On 28/03/2018, the Assessing Officer passed penalty order under Section 271(1)(c) of the Act levying penalty of INR 21,80,057/- being @ 150% of total tax liability.
- 4.3. Being aggrieved, the Appellant preferred appeal before the CIT(A) challenging the above levy of penalty which was dismissed vide order dated 28/02/2024.
- 4.4. Now the Appellant has preferred the present appeal before the Tribunal.
5. We have heard both the sides and perused the material record.
  - 5.1. It was contended by the Learned Authorised Representative for the Appellant that income had been assessed on estimation basis and therefore, no penalty could be levied. Without prejudice to the aforesaid, it was submitted that even in case penalty was to be levied, the benefit of tax deducted at source was to be granted to the Appellant while determining the quantum of penalty keeping in view the provisions contained in Clause (c) Explanation 4 to Section 271(1) of the Act. It was submitted in case the benefit of tax deducted at source is granted the amount of tax sought to be evaded shall stand reduced to INR 25,978/-. It was submitted that the Assessing Officer has also erred in levying penalty at the rate of 150% of tax sought to be evaded without appreciating that the Appellant had not been able to file income tax return only for the three years and had been compliant in preceding as well as succeeding assessment years.
  - 5.2. Per contra, the Ld. Departmental Representative had submitted that

the Assessing Officer did not file income tax return for the Assessment Year 2010-11, 2011-12 and 2012-13. Further, during the assessment proceedings, the Appellant was non-compliant. Return in response to the notice issued under Section 148 of the Act was filed belatedly. Even the accounts maintained by the Appellant were not audited. Therefore, the Assessing Officer was correct in rejecting the books of account and levying penalty for concealment of particulars of income at the rate of 150% of tax sought to be evaded.

- 5.3. In rejoinder, the Learned Authorised Representative for the Appellant reiterated that the Appellant had been compliant in the preceding as well as the succeeding assessment years and had regularly filed income tax returns. For the Assessment Years 2010-11, 2011-12 and 2012-13 there was non-compliance on behalf of the Appellant on account of personal difficulty faced by the Appellant and for the reason that the Appellant could not receive timely assistance from the tax professional engaged by the Appellant. On a without prejudice basis it was reiterated that the levy of penalty at the rate of 150% of tax sought to be evaded was on a higher side and the same should be reduced to 100%. It was further submitted that the amount tax deducted at source was nearly same as tax calculated on estimated income and the same should be reduced from the tax liability to determine quantum of penalty.
6. Having considered the rival submissions and on perusal of record, we find that the Appellant had not filed the return of income for the Assessment Years 2010-11, 2011-12 and 2012-13 due personal difficulty and lack of legal advice/assistance. Further, the Appellant had also not produced audited books of account and other documents during the assessment proceedings. Therefore, the Assessing Officer had no option but to determine the income on estimate basis. Therefore, given the aforesaid facts and circumstances, we reject the contention of the Appellant to delete the penalty levied under Section

271(1)(c) of the Act. During the course of hearing, it was submitted on behalf of the Appellant that for the Assessment Year(s) under consideration there was non-compliance on behalf of the Appellant on account of lack of legal advice/assistance and personal difficulty faced by the Appellant. We note that the substantial amount of tax liability assessed by the Assessing Officer was met by the amount of tax deducted at source for the relevant assessment year. Taking note of the aforesaid, we deem it appropriate to direct the Assessing Officer to compute penalty at the rate of 100% of tax sought to be evaded.

- 6.1. We note that the Assessing Officer had not considered the amount of tax deducted at source for the relevant assessment year while determining the amount of tax sought to be evaded for determining the quantum of penalty under Section 271(1)(c) of the Act. In our view, as per the Clause (a) read with Clause (c) of Explanation 4 to Section 271(1) of the Act, which are attracted in the facts and circumstances of the present case, the amount of tax sought to be evaded has to be determined after reducing the amount of tax deducted at source. Accordingly, we direct the Assessing Officer to determine the amount of tax sought to be evaded after taking into consideration the amount of tax deducted at source for the relevant assessment year.
- 6.2. In terms of the paragraph 6 and 6.1 above, the Assessing Officer is directed to re-compute the amount penalty under Section 271(1)(c) of the Act. In terms of the aforesaid, Ground No. 1 raised by the Appellant is partly allowed.

**ITA No. 1338/MUM/2024 (Assessment Year: 2011-12)**  
**ITA No. 1339/MUM/2024 (Assessment Year: 2012-13)**

7. We would next take up appeal for the Assessment Year 2010-11 and Assessment Year 2012-13 which has been preferred by the Assessee challenging the order, each dated 28/02/2024, passed by the CIT(A).

- 7.1. The CIT(A) had dismissed the appeals of the Assessee against the Penalty Orders, dated 28/03/2018 and 29/03/2019, passed under Section 271(1)(c) of the Act for the Assessment Year 2011-12 and 2012-13, respectively. The grounds raised in appeal for Assessment Years 2011-12 and 2012-13 are identical to those raised in Assessment Year 2010-11. Since there is no change in the facts and circumstances in the case when compared to Assessment Year 2010-11, both the sides agreed that our findings/adjudication in relation to grounds of appeal raised in Assessment Year 2010-11 shall apply mutatis mutandis to the corresponding grounds raised in appeal for Assessment Years 2011-12 and 2012-13. Accordingly, adopting the reasoning given in paragraph 5 to 6.1 above while adjudicating appeal for the Assessment Year 2010-11, we directed the Assessing Officer to re-compute the quantum of penalty at the rate of 100% of tax sought to be evaded (as reduced by the amount of tax collected at source). Accordingly, in terms of paragraph 6 and 6.1 above, Ground No. 1 raised by the Appellant in appeal for the Assessment Year 2011-12 and Ground No. 1 raised in appeal for the Assessment Year 2012-13, are partly allowed.
8. In result, all the three appeals preferred by the Assessee are partly allowed.

Order pronounced on 26.06.2024.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 26.06.2024  
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai