

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "एस एम सी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2844 और 2850/दिल्ली/2023 (नि.व. 2014-15 & 2015-16)  
ITA Nos.2844 & 2850/DEL/2023 (A.Y.2014-15 & 2015-16)

Gupta Engineers and Contractor,  
195, Patel Nagar, Hapur,  
Uttar Pradesh 245101  
PAN No. AACFG-1163-A

..... अपीलार्थी/Appellant

बनाम Vs.

Additional Commissioner of Income Tax,  
Special Range, CGO Complex-2, Hapur Road,  
Ghaziabad, Uttar Pradesh 201010

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri P.S Kashyap, Chartered Accountant  
प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Tiwari, Sr. DR  
सुनवाई की तिथि/ Date of hearing : 12/12/2024  
घोषणा की तिथि/ Date of pronouncement: : 12/12/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 25.08.2023, for assessment year 2014-15 and order dated 11.08.2023, for assessment year 2015-16, confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961(hereinafter referred to as 'the Act).

2. Since, facts germane to levy of penalty u/s. 271(1)(c) of the Act in both appeals are identical, these appeals are taken up together for adjudication and are decided by this common order. For the sake of convenience, facts are narrated from appeal of the assessee for AY 2014-15.

**ITA No. 2844/Del/2023 (AY 2014-15)**

3. Shri P.S Kashyap, appearing on behalf of the assessee submits that the Assessing Officer (AO) vide order dated 29.12.2017 passed u/s. 143(3)/264 of the Act made addition of Rs.37,06,618/-, merely on estimations by rejecting books of accounts of the assessee u/s. 145(3) of the Act. The AO vide order dated 23.06.2017 levied penalty u/s. 271(1)(c) of the Act in respect of estimated additions of Rs.37,06,618/-. He submitted that it is a well settled law that no penalty can be levied in respect of additions based on estimations. The assessee filed appeal before the CIT(A). The CIT(A) vide impugned order dismissed appeal of the assessee and confirmed penalty order.

The Ld. AR in support of his submissions placed reliance on following decisions:

*(i) CIT vs. Aero Traders P Ltd. 322 ITR 216 (Del)*

*(ii) Harigopal Singh vs. CIT 258 ITR 85 (P & H)*

*(iii) CIT vs. Subhash Trading Company 221 ITR 110 (Guj.)*

4. On the other hand, Shri Rajesh Tiwari representing the department strongly supporting the impugned order prayed for confirming levy of penalty u/s. 271(1)(c) of the Act. The Id. DR submits that but for scrutiny assessment the income would have escaped tax net.

5. Both sides heard, orders of the authorities below examined. A perusal of assessment order dated 29.12.2017 reveals that same has been passed consequent to order pass u/s. 264 of the Act. The AO vide assessment order dated 30.12.2016 passed u/s. 143(3) of the Act had rejected books of the assessee and had estimated net profit on gross turnover at the rate of 5%. Against said assessment order, the assessee filed petition u/s. 264 of the Act before the Principal CIT, however, the same was rejected vide order dated 06.04.2017. Consequent, to said order the AO passed order dated 24.12.2017 and initiated penalty proceedings u/s. 271(1)(c) of the Act. The penalty was levied by the AO vide order dated 23.06.2017. It is now well accepted legal position that penalty u/s. 271(1)(c) of the Act on estimated additions is unsustainable. The Hon'ble Jurisdictional High Court in the case of Aero Traders P. Ltd. (supra) has held that where profit was estimated after rejection of books, imposition of penalty for furnishing inaccurate particulars of income was not justified. Similar view has been expressed in the case of CIT vs. Subhash Trading Company (supra) and in the case of Harigopal Singh vs. CIT (supra). Thus, in light of undisputed fact of addition on estimations and decisions referred above, I am of considered view that penalty levied u/s. 271(1)(c) in the instant case is unsustainable. The AO is directed to delete the penalty.

6. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

**ITA No. 2850/Del/2023 for AY 2015-16**

7. Both sides are unanimous in stating that facts in the impugned assessment year are identical to AY 2014-15. Penalty has been levied on account of estimated

additions after rejection books of account u/s. 145(3) of the Act. The AO has estimated net profit at the rate of 5% of gross turnover. Thereafter, penalty proceeding u/s. 271(1)(c) of the Act were initiated and penalty was levied vide order dated 13.06.2018.

8. I find that penalty in the impugned assessment year has been levied on estimated additions as was the case in AY 2014-15. Thus, the findings given in AY 2014-15 would *mutatis mutandis* apply to the impugned assessment year, as well. Penalty levied u/s. 271(1)(c) of the Act is deleted for party of reasons.

9. In the result, impugned order is *set aside* and appeal of assessee is allowed.

**10. To sum up appeals in ITA No. 2844/Del/2023 for AY 2014-15 & 2850/Del/2023 for AY 2015-16 are allowed.**

Order pronounced in the open court on Thursday the 12<sup>th</sup> day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 12/12/2024

NV/-

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI