

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM

ITA No. 5312/Del/2015 : Asstt. Year : 2006-07

DCIT, Central Circle-25, New Delhi	Vs	M/s Somic ZF Components Ltd. (Earlier known as M/s Sona Somic Lemforder Components Ltd.), B-59, (LGF), Sarvodaya Enclave, New Delhi-110017
(APPELLANT)		(RESPONDENT)
PAN No. AAACS4766Q		

**Assessee by : Sh. Ved Jain & Ashish Goel, Advs.
Revenue by : Sh. F. R. Meena, Sr. DR**

Date of Hearing : 21.09.2016	Date of Pronouncement : 28.10.2016
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 03.06.2015 of ld. CIT(A)-29, New Delhi.

2. Following grounds have been raised in this appeal:

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in law and on facts in deleting the penalty imposed of Rs.2,18,06,494/- u/s 271(l)(c) of the I.T. Act, 1961 despite the fact that the addition was made on the basis of incriminating document found during the course of search and even accepted by the assessee.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the penalty imposed u/s 271(l)(c) of the I.T. Act, 1961 without going into the merit of the case.

3. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in observing that MAT provisions are immune from the concealment penalty provisions, because MAT provisions are based on book profit which has nothing to do with the assessment under normal provisions of the Income Tax Act.

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

5. 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.”

3. From the above grounds, it is clear that only grievance of the department relates to the deletion of penalty of Rs.2,18,06,494/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee filed return of income on 30.11.2006 declaring total loss of Rs.8,35,51,857/- which was assessed u/s 143(3) of the Act at a loss of Rs.8,09,74,290/- on 19.11.2008. Later on, a search and seizure operation u/s 132 of the Act was carried out on 29.11.2011 at the office premises of the assessee. Thereafter,

notice u/s 153A of the Act dated 03.10.2012 was issued and served upon the assessee. In response to the said notice, the assessee filed the return of income on 30.03.2013 declaring loss of Rs.1,20,41,554/- under normal provisions of the Act and book profit of Rs.2,33,35,179/-. The income of the assessee under normal provisions was determined at a loss of Rs.1,20,41,554/- which was declared by the assessee in the return filed u/s 153A of the Act as against the loss of Rs.8,09,74,290/- determined originally by the AO u/s 143(3) of the Act. As consequent to the search operation, it was found that the assessee had wrongly carried forward losses of amalgamated company, therefore, the assessee in the return of income filed u/s 153A of the Act reduced the carried forward losses from Rs.8,09,74,290/- to Rs.1,20,41,154/-. Since the carried forward of losses was reduced, the AO held that the penalty was leviable u/s 271(1)(c) of the Act on the carried forward losses which were lesser than the carried forward losses claimed in the return of income filed u/s 139 of the Act. Accordingly, the AO levied the penalty u/s 271(1)(c) of the Act.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) who deleted the penalty by observing in paras 6 and 6.1 of the impugned order as under:

“6. I have perused the penalty order and have also gone through the submissions of the appellant and have considered the judgments relied upon by the AO and the appellant. In the appellant's case it is matter of record that inspite of the reduction in the carried forward of losses in the return of income filed under section 153A, the appellant has ultimately been assessed to tax at a deemed income under Section 115JB. Therefore in my humble view the facts of the appellant's case are covered by the facts of the decisions in the following cases.

- a) CIT vs. Central Warehousing Corp, 2012(4)TMI 434.*
- b) Ruchi Strips and Alloys Ltd Vs DCIT (ITA No. 6948/Mumbai/2008)*
- c) CIT Vs. Nalwa Sons Investment (Appeal No. 1420 of 2009)(Delhi) and SLP was dismissed by Supreme Court on 26.08.2010 (327 ITR 543)*

6.1 Respectfully following the order of the jurisdictional High Court in the case of Nalwa Sons Investment Ltd (Supra), I am of the considered view that MAT provisions are immune from the concealment penalty provisions, because MAT provisions are based on book profit which has nothing to do the assessment under normal provision of the Income Tax Act.

Even otherwise from facts and evidences available on record, it is seen that the losses which are wrongly carried forward belonged to the amalgamating company and it relates to assessment year 2002-03 and not to the year under consideration. Hence, when there is a legacy mistake carried forward from assessment year 2002-03 onwards, the appellant cannot be penalized in the year under consideration.

Therefore, in view of the above discussions, the penalty levied under section 271(1)(c) cannot be sustained.”

6. Now the department is in appeal. The ld. DR strongly supported the order of the AO and reiterated the observations made in the penalty order dated 28.08.2014.

7. In his rival submissions the ld. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the ld. CIT(A). It was further submitted that the issue under consideration is directly covered by the judgment of the Honøble Jurisdictional High Court in the case of CIT Vs Nalwa Sons Investment Ltd. (2010) 327 ITR 543 and also by the Circular No. 25/2015 issued by the CBDT on 31.12.2015 (copy of the said order and the Circular were furnished which are placed on record).

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the penalty was levied by the AO only for the reason that the claim of brought forward losses in original return of income u/s 139(1) of the Act was reduced by the assessee in the return filed u/s 153A of the Act. However, the assessee had ultimately been assessed to

tax at a deemed income u/s 115JB of the Act. In this regard, the CBDT has issued a Circular No. 25/2015 dated 31.12.2015 stating therein as under:

“Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act, 2000 with effect from 1-4-2001.

2. Under clause (iii) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed.

3. In this context, Hon'ble Delhi High Court in its judgment dated 26-8-2010 in ITA No.1420 of 2009 [2010] 194 taxman 387 (Delhi) in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of section 115JB of the Act, then penalty under section 271(1)(c) of the Act could not be imposed with reference to additions /disallowances made under normal provisions. The judgment has attained finality.

4. Subsequently, the provisions of Explanation 4 to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income

declared for the purpose of MAT u/s 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f. 1-4-2016.

5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1-4-2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under section 271(1)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1-4-2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.

6. The above settled position is to be followed in respect of section 115JC of the Act also.

7. Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.”

9. The above Circular was issued by the CBDT only after the judgment of the Honøble Jurisdictional High Court in the case of CIT Vs Nalwa Sons Investment Ltd. (supra). It is clear from the said Circular that the penalty u/s 271(1)(c) of the Act is not attracted when the tax payable on the total income as computed under the normal provisions of the Act is less than the book

profit u/s 115JB of the Act. Furthermore, in the instant case, the losses which were wrongly carried forward belonged to the amalgamating company and were related to the assessment year 2003-03 and not the year under consideration. Therefore, the penalty u/s 271(1)(c) of the Act could not be levied, particularly when the mistake was committed by the assessee inadvertently while claiming the carried forward of losses relating to the amalgamating company which relates to the assessment year 2002-03, in the original return of income. We, therefore, do not see any valid grounds to interfere with the findings of the ld. CIT(A) In that view of the matter, we do not see any merit in this appeal of the department.

10. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 28/10/2016)

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/10/2016

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR