

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C NEW DELHI  
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG : JUDICIAL MEMBER

ITA no. 1284/Del/2013  
Asstt. Yr: 2005-06

ADIT, International Taxation, Vs. G & T Resoures Europe Ltd.,  
Dehradun. F-04 & 05, Triveni Commercial  
Complex, Sheikh Sarai, Phase-I,  
New Delhi.

( Appellant ) PAN: AABCG9877 F  
(Respondent)

Appellant by : Shri T. Vasunathan Sr. DR  
Respondent by : None

Date of hearing : 23/07/2015.  
Date of order : 24/09/2015.

**ORDER**

**PER S.V. MEHROTRA, A.M:**

This appeal has been preferred by the revenue against the order dated 18-12-2012 passed by the Id. CIT(Appeals)-II, New Delhi in appeal no. 23/CIT(A)-II/2012-13, cancelling the penalty levied u/s 271(1)(c) of the Act, relating to asstt. Year 2005-06.

2. None put in appearance on behalf of the assessee at the haring despite personal knowledge of the date of hearing. We proceed to dispose of the departmental appeal, ex parte, qua the assessee, on merits and in that process we have heard Id. DR and perused the record of the case.

3. Brief facts of the case are that the assessment for the assessment year in question was completed at total income of Rs. 45,98,920/- as against returned income of Rs. 9,58,778/-, treating gross receipts deemed profit @ 10% u/s 44BB of the Income-tax Act, 1961. The assessee had filed return declaring income at 1% of gross receipt of Rs. 4,04,45,999/- towards sales of spars for taxation and had filed receipts on account of repair/ revamp as taxable u/s 44BB at 10% deemed profit rate. Final assessment was completed in pursuant to DRP direction on gross revenue on both the counts @ 10%. The AO levied penalty of Rs. 15,22,307/-, inter alia, observing that assessee had given consent to be taxed u/s 44BB in respect of entire income from contracts.

4. Ld. CIT(A) deleted the penalty after noting the following the submissions:

“5.0 Grounds 2 to 4 challenge the levy of penalty through the following submissions:-

"The A.O. has nowhere detected the concealment of income nor has he detected that the assessee had furnished inaccurate particulars of income. The assessee's agreeing with the DRP for taxing of the receipts from repair/revamp at deemed profit rate of 10% under section 44BB is only a pragmatic view for purchasing peace with the department and to avoid litigation on this issue. When the entire receipts are disclosed to the department and also ONCC itself has deducted the TDS @1% on the sale of the spares as per order under section 195(2) issued by the Income Tax Department it cannot be viewed that there was either concealment of income or furnishing of inaccurate particulars of income. What the assessee had shown in the return of income was a view possible whereas the view of the DRP accepted by the assessee was also a possible view on

the same set of facts. Hence, the penalty imposed by the A.O. is bad in law and is not maintainable. It deserves to be cancelled.

5.1 It is clear that the Appellant was guided by the order u/s 195(2) of the Act to offer his income for tax in a particular manner. It is another matter that at the assessment stage the same was enhanced. There is clearly no case of penalty u/s 271 (1)(c) of the Act made out and the levied penalty is accordingly deleted.”

6. Having heard Id. DR we do not find any reason to interfere with the order of Id. CIT(A) because the entire receipts were disclosed to the department and also ONGC itself had deducted the tax @ 1% on the sale of the spares as per order u/s 195(2) issued by the Income-tax Department. In view of above, the departmental appeal is liable to be dismissed.

7. In the result revenue's appeal is dismissed.

Order pronounced in open court on 24/09/2015..

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER  
Dated: 24/09/2015.

Sd/-  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

| -+  |  | Date       | Initial |       |
|-----|--|------------|---------|-------|
| 1.  | Draft dictated on                                | 23-09.2015 |         | PS    |
| 2.  | Draft placed before author                       | 24.09.2015 |         | PS    |
| 3.  | Draft proposed & placed before the second member |            |         | JM/AM |
| 4.  | Draft discussed/approved by Second Member.       |            |         | JM/AM |
| 5.  | Approved Draft comes to the Sr.PS/PS             |            |         | PS/PS |
| 6.  | Kept for pronouncement on                        |            |         | PS    |
| 7.  | File sent to the Bench Clerk                     |            |         | PS    |
| 8.  | Date on which file goes to the AR                |            |         |       |
| 9.  | Date on which file goes to the Head Clerk.       |            |         |       |
| 10. | Date of dispatch of Order.                       |            |         |       |