

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

**BEFORE SH. I.C. SUDHIR, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 5397/Del/2013
Assessment Year: 2003-04

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| Asstt. Commissioner of Income Tax, Circle-13(1), New Delhi | Vs. | Sh. Subhash Chandra Sehgal, Prop.-M/s. Ozone Ayurvedics 1, LSC, Block A-3, Janak Puri, New Delhi. |
| GIR/PAN : AATPS8259C | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Smt. Anima Barnwal, Sr. DR |
| Respondent by | Dr. Rakesh Gupta & Sh. Somil Aggarwal, Adv. |

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| Date of hearing | 13.04.2016 |
| Date of pronouncement | 27.05.2016 |

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax(Appeals) dated 01.07.2013 in relation to assessment year 2003-04, raising the following grounds of appeal:

1. *The Ld. CIT (A) has erred in law and on facts in deleting the penalty u/s 271 (l)(c) of the Act imposed on account of wrong claim in respect of the following expenses:*
 - i) *Prior Period Expenses : Rs. 8,60,255/-*
 - ii) *Prepaid Expenses : Rs. 7,723/-*
 - ii) *Expenditure of capital nature : Rs. 4,69,744/-*
2. *The Ld. CIT (A) has erred in law and on facts in deleting the penalty u/s 271 (l)(c) of the Act imposed on account of wrong claim ignoring the fact*

that the addition in respect of the above cited expenses were confirmed by the appellate authorities.

3. *Tire Ld. CIT (A) has erred in law and on facts in deleting the above penalty without appreciating the fact that the truth of wrong claim came to the knowledge of the assessing officer only during the assessment proceedings and taxes on the same would have been evaded had the assessment proceedings not been initiated in this case.*
4. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.*

2. We have heard both the parties and perused the relevant material on record. It is noticed that the CBDT has issued Circular No. 21 of 2015 dated 10.12.2015 with retrospective effect, revising the monetary limit to Rs.10,00,000/- for not filing appeals before the Tribunal. The Id. Sr. Departmental Representative, although supported the order of the Assessing Officer, but could not controvert the fact that tax effect involved in the appeal is less than Rs.10,00,000/-.

3. From para 10 of the above Circular, it is palpable that the Instruction is applicable to the pending appeals also with retrospective effect and there is a clear-cut direction to the Department to withdraw or not press such appeals filed before the ITAT, wherein tax effect is less than Rs.10,00,000/-. Going by the prescription of the afore-noted Circular, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in this appeal is

admittedly less than the prescribed limit i.e. Rs. 10,00,000/- for not filing the appeal. Accordingly, we dismiss the instant appeal without going into merits of the case. However, the Department is at liberty to file the Miscellaneous Application, if the tax effect is more than the prescribed limited of Rs. 10 lacs or otherwise.

4. In the result, the appeal of the Revenue stands dismissed.

The decision is pronounced in the open court on 27th May, 2016.

Sd/-

(I.C. SUDHIR)

JUDICIAL MEMBER

Dated: 27th May, 2016.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi