

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 4986/Del/2017 : Asstt. Year : 2012-13

ACIT, Circle-19(2), New Delhi-110002	Vs	PTC Engineering (India) P. Ltd., C-657, New Friends Colony, New Delhi-110025
(APPELLANT)		(RESPONDENT)
PAN No. AAFCP2677L		

Assessee by : Sh. Deepesh Garg, Adv.

Revenue by : Sh. Apoorva Bhardwaj, Sr. DR

Date of Hearing: 04.02.2021	Date of Pronouncement: 25 .02.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-36, New Delhi dated 08.05.2017.

2. Following grounds have been raised by the revenue:

"1. In the facts and circumstances of the case, the Id. CIT(A) erred in deleting the penalty of Rs.83,54,588/- imposed under section 271(1)(c) of the Income Tax Act, 1961."

3. The facts relevant to the adjudication of the case as taken from the order of the Id. CIT (A) are as under:

- i. The assessment was done from loss of Rs.5,49,14,478/- to loss of Rs.2,91,64,478/- by adding an amount of Rs.

2.5 crore on account of share capital and Rs. 7.5 lac as commission paid for the same.

- ii. The company is showing a loss since then which means that it could not have benefitted from not reflecting Rs. 2.5 crore as its income.
- iii. In the assessment proceedings, the assessee was asked to provide all evidences regarding share capital of Rs. 2.5 crore. In reply to this query, the assessee has produced all documentary evidences like ITRs, Share applicant forms, confirmations, bank accounts, balance sheets, board resolution etc. However, this fact was not mentioned in the assessment order at all. In the remand report, the current AO has accepted that the submission made by the assessee dated 12.01.2015, 23.01.2015 and 09.02.2015 were in the assessment folder. This fact of submissions of documents has also been mentioned in the penalty order.
- iv. The assessee surrendered Rs. 2.5 crore when specifically it was asked to produce the share applicants as according to the assessee the share applicants were not cooperative because the company was running into huge loss and business was very low. For this reason, the investors later even left the company.
- v. The AO accepted the surrender made on 13.02.2015 and further made no enquiry or investigation by issuing notice u/s. 133(6) or summons u/s. 131 to call for the share applicants, in case he was suspecting the genuineness of the share applicants. The identity and the creditworthiness of the share applicants was already proved by the assessee vide the documentary evidence.

- vi. The assessee has surrendered the income on the condition that no penalty would be levied. It appears that the AO has believed the first part of surrender without making any investigation or proving concealment merely by relying on the submission of the assessee but ignored the second part of the submission dated 13.02.2015 regarding non levy of penalty.
- vii. Although the penalty was initiated for furnishing of inaccurate particulars of income as per Assessment order, the notice dated 18.02.2015 did not mention any of the limbs in particular and the penalty order has been passed imposing the penalty for concealment of the income stating that it is clear case of concealment.
- viii. The assessee did not file appeal to the CIT(A) as there was no tax effect, the company being assessed at a loss.

4. The Id. CIT (A) held that *"from the above analysis, it is clear that the AO had not detected any concealment or furnishing of inaccurate details on his own till the point that the assessee itself stated that it is offering Rs. 2.5 crore as its income. This was accepted by the AO as such without establishing that it was concealment of income. No further investigation was carried out by the AO. Further all relevant documentary evidences was submitted by the assessee which was not mentioned by the AO in his assessment order. Thus, it is not clear as to what lead him to think that the offer of income was made after detection by the department. The AO has relied on various case laws for example MAK Data Pvt. Ltd. decided by Hon'ble Supreme Court. However, after going through that*

order, it is seen that in that case no documentary evidence was filed at all by the assessee and the amount was offered by the assessee after detection during search/survey in the sister concern. The facts of the case are therefore different.

Further, it is also seen that the AO is not clear as to on which limb the penalty applies, furnishing of inaccurate particulars or concealment of income. No inaccurate or wrong information was pointed out by the AO and no detection of any concealment was either made. It is also seen that apparently there was no intention of the assessee to avoid tax in this case, as even after the addition, there was a loss. This loss has not been adjusted even till date as the company has been filing a less return.

Thus, it is held that penalty order has been passed mechanically without carrying out any enquiry, or confronting the assessee on the source of surrendered income or positively recording a finding of concealment which can invite penalty. Neither has the AO gone into the intent of why the assessee would conceal such income when it could have shown it as income since there were huge losses. The penalty imposed is on concealment of income which is not proved. Whereas, it was initiated for furnishing inaccurate detail which was not proved either. This issue is squarely covered by the ratio of Hon'ble Supreme Court order in case of SSA's Emerald Meadows dated 05.08.2016, which endorsed the earlier order by Karnataka High Court in case of Manjunath Cotton & Ginning Factory, 359 ITR 565 (2013) relied upon by the assessee where it is laid down inter alia that 'Taking up of penalty provision on one limb & finding the assessee guilty on another is bad in law'.

5. In view of above discussion, the Id. CIT (A) held that the penalty is not sustainable either on technical ground or on merit.

6. We have heard the arguments of both the parties who relied on the respective orders and also perused the material available on record and the notices issued. Having gone through the detailed order of the Id. CIT (A), we have no hesitation to hold that the Id. CIT (A) has rightly deleted the penalty levied by the Assessing Officer. Hence, no interference is called for in the order of the Id. CIT (A).

7. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 25/02/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 25/02/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR