

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'B', NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER  
AND SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 6881/Del/2015  
A.Y. 2009-10**

ACIT Central Circle 3 Room No. 332 ARA Centre Jhandewalan Extn. New Delhi	<b>vs.</b>	Jotindra Steel & Tube Ltd. 602, Chiranjit Tower 43, Nehru Place New Delhi  PAN: AAACH1872C
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh. Anshu Prakash, Sr.D.R.
<b>Respondent by</b>	Sh. Ved Jain, C.A. and Sh. Ashish Goel, C.A.
<b>Date of Hearing</b>	29.08. 2017
<b>Date of Pronouncement</b>	18 <sup>th</sup> September, 2017

**ORDER**

**PER L.P. SAHU, ACCOUNTANT MEMBER**

This appeal filed by the Revenue is directed against the order dt. 19.10.2015 of the Ld. CIT(Appeals)-17, New Delhi pertaining to the Assessment Year (A.Y.) 2009-10 on the following grounds of appeal.

- “1. The order of Ld. CIT(A) is not correct in law and on facts.*
- 2. On the facts and circumstances of the case, the CIT(A) has erred in law and in facts in deleting the penalty of Rs.18,48,704/- imposed by A.O. u/s 271(1)(CIT(A) ) of the Income Tax Act, 1961 (the Act).*

3. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*”

2. The brief facts of the case are that the assessee filed return of income declaring income of Rs.2,78,52,373/-. The case was selected for scrutiny and the Assessing Officer (A.O.) completed the assessment at an income of Rs.3,34,19,181/- by making following disallowances.

i. Disallowance u/s 40(a)(ia) of the Act	10,32,133/-
ii. Addition for fee paid on increase in authorised share capital	1,00,000/-
iii. Excess disallowance of depreciation on electrical installation	1,27,844/-
iv. Addition on account of unpaid leave encashment u/s 43B	5,83,999/-
v. Service tax payable	37,22,832/-
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Taxable income	Rs. 3,34,19,181/-
	Rounded off : Rs.3,34,19,180/-

The A.O. initiated penalty proceedings on the above additions u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income on 11.3.2014.

3. Aggrieved by the additions made by the A.O. the assessee went in appeal before the Ld. First Appellate Authority. But the assessee did not contest the ground in regard to ROC fee of Rs.1,00,000/- paid. The Ld. CIT(A) confirmed the additions made by the A.O. and deleted the penalty imposed.

4. Aggrieved by this order of the Ld. CIT(A) the Revenue filed appeal before us.

5. Ld. D.R. relied on the order of the A.O.

6. On the other hand Ld.A.R. relied on the order of the Ld. CIT(A).

7. We have heard both sides and perused material placed on record and orders of the authorities below. Ld.A.R. drew out attention to para 2 of Ld. CIT(A)'s order and submitted that in assessee's own case for the A.Y. 2009-10 order dated 21<sup>st</sup> January, 2015 the addition of Rs.10,32,133/- made by the A.O. u/s 40(a)(ia) of the Act has been set aside to the file of A.O. for deciding denovo, therefore, the penalty cannot survive. He submitted that as regards leave encashment and service tax payable are concerned, both the issues were decided by the Coordinate Bench in favour of the assessee and penalty in this case also cannot survive. He submitted that the A.O. imposed penalty on Rs.1,00,000/- ROC fee paid for increasing the share capital which has been decided in favour of the assessee by Ld. CIT(A) by stating that it is a debatable issue whether it is capital expenditure or revenue expenditure. In this regard Ld. AR placed reliance on the judgement of Hon'ble Supreme Court in the case of Reliance Petroproducts P.Ltd. (2010) 322 ITR 158 (SC) and Hon'ble Delhi High Court judgement in case of CIT, LTU, Delhi vs. Indian Renewable Energy (in ITA 294/2016) dt. 22.8.2017 wherein it was held that a mere claim in the return of income which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee, such claim in the return cannot amount to inaccurate particulars, hence would not attract penalty u/s 271(1) (c) of the Act.

7.1. Ld. CIT(A) has deleted the penalty by holding as under.

“2. There is only one issue involved in all the grounds of appeal which relates to levy of penalty u/s 271(1)(c) of the Act of Rs.18,48,704/-. The fact of the case is that during the assessment proceedings, the A.O. made additions on various grounds on which penalty u/s 271(1)(c) was initiated and levied. However, the appellant filed a copy of the order of the ITAT as the order passed by the A.O. reached to ITAT and the ITAT Delhi Bench D, New Delhi has set aside the issue with regard to addition of Rs.10,32,133/- made by the A.O. u/s 40a(ia). The matter was restored back to the file of A.O. to be decided denovo. Since, the issue has been set aside by the ITAT, therefore, the penalty levied u/s 271(1)(c) of the Act does not survive. So far as the additions with regard to leave encashment u/s 43B and service tax payable are concerned, both the issues have been decided in favour of the appellant. The only addition of Rs.1 lac made by the A.O. on account of fee paid to ROC on account of increase in authorised share capital was not contested by the appellant. The appellant treated the above expenditure as revenue in nature whereas the A.O. disallowed the same on the ground that the expenditure related to payment made to ROC for increase in share capital was of capital in nature. However, after going through the facts and circumstances of the case, I find that it was a debatable issue on which there was a possibility to have different opinions, therefore, in totality of the fact, I am of the view that the A.O. was justified to disallow the claim of expenditure being capital in nature, however, penalty u/s 271(1)(c) of the Act is not sustainable on such issues. Under these circumstances, the penalty levied by the A.O. is directed to be deleted.

3. In the result, appeal is allowed.”

7.2. We are of the view that the Ld. CIT(A) has given a well reasoned order which do not require any interference.

8. In the result the appeal by the Revenue is dismissed.  
Order pronounced in the Open Court on 18.09.2017.

Sd/-

**(I.C. SUDHIR)  
JUDICIAL MEMBER**

Sd/-

**(L.P. SAHU)  
ACCOUNTANT MEMBER**

Dated: the 18<sup>th</sup> September, 2017

\* *gmv*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches  
New Delhi