

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.641/Del/2018
Assessment Year : 2009-10**

M/s Action Construction Equipment Ltd.Kashyap & co. Chartered Accountants, 214, Citi Centre, Begum Bridge Road, Meerut, (U.P.)-250001	vs	DCIT, Central Circle-1, Complex, NH-IV, NIT, Faridabad.
PAN-AAACA6189P		
APPELLANT		RESPONDENT

Appellant by	Sh. P.S.Kashyap, CA
Respondent by	Mrs. Alka Gautam Sr. DR
Date of Hearing	13.10.2021
Date of Pronouncement	25.10.2021

ORDER

PER KUL BHARAT, JM :

This appeal by the assessee is directed against the order dated 30.11.2017 of the learned CIT(A)-3, Gurgaon, relating to Assessment Year 2009-10. The assessee has raised following grounds of appeal:-

- 1. That on facts and in law imposition of penalty under section 271 (1)(c) for Rs.5,42,648/- is without any basis, totally wrong, unjustified, illegal and unwarranted. The appellant is not liable to penalty u/s 271(1) (c) on the following grounds:*

i) That the Ld CIT (A) has not considered the various facts before passing the order.

ii) That addition was made on the basis of certain expenditure written in a note pad which does not belong to the appellant. There was no material available to assume that expenditure was incurred by the appellant and no penalty can be imposed on ad hoc additions.

iii) That the Ld A.O has imposed penalty without specifying in the show cause notice dated 18.03.2015 that penalty is imposed for concealment of Income or for furnishing inaccurate particulars.

Therefore the basis taken and method adopted by the assessing officer for imposing penalty u/s 271 (1)(c) for Rs. 5,42,648/- and confirmed by CIT(A)-3 is totally wrong, unjustified and unwarranted and the same deserves to be deleted in full”.

2. The facts, in brief, are that the assessment u/s 153A(1) of the Income Tax Act (hereinafter referred to ‘the Act’) was completed on 26.12.2011 at assessed income of Rs.32,88,91,470/- by the ACIT Central Circle-I, Faridabad. It is noted by the Assessing Officer (“AO”) that the issue related to deduction 80IC of the Act was set-aside back to the file of the Assessing Officer. It is further observed by Assessing Officer that, in respect of addition of Rs.15,96,494/- made during the course of assessment on account of unaccounted receipt/expenditure as noted in Saraswati note pad which was found and seized from the premises of the assessee company, the assessee did not file any appeal. The Assessing Officer

initiated penalty proceedings on this addition and subsequently by the impugned order dated 29.09.2015 imposed penalty u/s 271(1)(c) of the Act of Rs.5,42,648/-.

3. Aggrieved against this, the assessee preferred appeal before the ld. CIT(A), who sustained the penalty and now the assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee submitted that the grievance of the assessee against imposition of the penalty are that the Ld. CIT(A) failed to appreciate the facts that the addition was made on the basis of certain figures noted in note pad which did not belong to the assessee, There was no material to assume that the expenditure was incurred by the assessee. Hence, no penalty could be imposed on such ad-hoc addition. Moreover, the penalty has been imposed without specifying specific charge in the notice issued u/s 274 of the Act. Therefore, assumption of jurisdiction was contrary to the settled proposition of law. Further, the ld. counsel for the assessee submitted that the facts were identical in the Assessment Year under appeal and Assessment Year 2010-11 interestingly, the Assessing Officer in the Assessment Year

2010-11, dropped the penalty proceedings, however imposed in the Assessment Year under appeal in arbitrary and unjustified manner. He further submitted that even otherwise also this penalty cannot be sustained as the same has been imposed without specifying the charge. In support of this contention, Ld. Counsel for the assessee relied on the judgement of Hon'ble Jurisdictional High Court rendered in the case of *PCIT vs Sahara Life Insurance Company Ltd.* reported in 432 ITR 84.

5. Per contra, the Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

6. We have heard the rival submission, perused the material available on record and gone through the orders of the authorities below. The Revenue has not controverted the fact that the facts are identical as were in the Assessment Year 2010-11 and the penalty proceeding pertaining of this year was dropped. The assessee has placed on record the order of the Assessing Officer pertaining to the Assessment Year 2010-11 dated 29.09.2015, wherein, the Assessing Officer had himself dropped the penalty proceedings. However, in the Assessment

Year under appeal, the Assessing Officer imposed penalty by observing as under:-

“The submission of the assessee has been duly considered but not found convincing. Citations given by the assessee are not related to the instant case. Additions were made on the basis of all material and facts found during the course of search operation and also failed the assessee to justify during the course of search operation and also failed the assessee to justify during the assessment proceedings. Non filing of appeal against the said addition is also strengthening the view taken by the department and acceptance of furnishing/concealing income to the tune of Rs.15,96,494/- by the assessee. From the above, it is crystal clear that all the conditions for levying of penalty u/s 271(1)(c) of the Act are applicable in the case of the assessee. Therefore, assessee is in default and penalty is leviable on the additions of Rs.15,96,494/- as I am fully satisfied that assessee has concealed particulars of income to the extent of Rs.15,96,494/-.”

7. The Assessing Officer has not given any reason as to why he dropped the penalty in Assessment Year 2010-11 and sustained the imposition of penalty for Assessment Year 2009-10 under the same set of facts. Moreover, in the impugned penalty order, the Assessing Officer has stated that non-filing of appeal goes to demonstrate the acceptance by the assessee of furnishing/concealing of income to the tune of Rs.15,96,494/-. This observation goes to demonstrate that the Assessing Officer had not specified the charge, whether it was for furnishing of

inaccurate particulars of income or concealment of income. Therefore, looking into the facts where the Assessing Officer under the same set of facts has dropped the penalty in Assessment Year 2010-11, therefore, the penalty in this year also cannot be sustained, hence, deleted. Grounds raised in the appeal are allowed.

8. In the result, the appeal of the assessee is allowed.

Order was pronounced in open court on 25th October, 2021.

Sd/-

**(G.S. PANNU)
PRESIDENT**

Delhi; Dated: 25/10/2021.

Shekhar

Copy forwarded to:

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

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI