

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 7372/DEL/2017 (A.Y 2011-12)**

Gulshan Chemicals Ltd. 302, IIIrd Floor, 27, Saraswati House, Nehru Place, New Delhi  <b>PAN: AAACG4002H</b>  <b>(APPELLANT)</b>	Vs.	ACIT Circle-10(2) New Delhi  <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Sh. Deepesh Jain, CA and Sh. Shaurya Jain, CA</b>
<b>Department by:</b>	<b>Shri Anuj Garg, Sr. D.R</b>

<b>Date of Hearing</b>	<b>23.06.2022</b>
<b>Date of Pronouncement</b>	<b>12.07.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal has been filed by the assessee against the order dated 10/10/2017 passed by CIT(A)-35,, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. *That the Commissioner of Income-tax (Appeals) [“CIT(A)”] erred on facts and in law in directing levy of penalty under section 271(l)(c) of the Income-tax Act, 1961 (“the Act”) in respect of disallowance of Rs. 10,67,160 under section 40(a)(ia) of the Act on account of non-deduction of tax at source under section 194C of the Act from payment made for supply of water*

*allegedly holding that the appellant furnished inaccurate particulars of income.*

2. *That the CIT(A) erred on facts and in law in sustaining the penalty levied under section 271(l)(c) of the Act in respect of the aforesaid disallowance under section 40(a)(ia) of the Act of Rs. 10,67,160 allegedly on the basis that the quantum appeal on the said issue has been decided against the appellant, not appreciating that considering the merits of the matter the said disallowance was otherwise not warranted.*

3. *That the CIT(A) erred on facts and in law in confirming levy of penalty under section 271(l)(c) of the Act in respect of disallowance of deduction under section 80G of the Act of Rs. 7,026 allegedly holding that the appellant has furnished inaccurate particulars of income, quantum appeal in respect of the said disallowance was decided against the appellant.*

4. *That the CIT(A) erred on facts and in law in confirming levy of penalty under section 271(l)(c) of the Act with respect to the aforesaid disallowance without appreciating that penalty proceedings were initiated by the assessing officer without valid satisfaction being recorded in the assessment order, which is sine qua non for the assumption of jurisdiction.*

*The appellant craves leave to add, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.*

3. The Ld. Counsel for the assessee submitted that, out of 11 addition/disallowance all other addition/disallowance have been deleted by the CIT(A) except disallowance made under provisions of Section 40a(ia) and disallowance of deduction claimed u/s 80G of Rs. 7,027/- have been sustained. The Ld. Counsel for the assessee further submitted that, in order to buy peace and to avoid litigation, not preferred appeal on the above issues. The Department, however, challenged the order of CIT(A) for grant substantial relief to the assessee in ITA No. 1523/Del/2015, the Coordinate Bench of this Tribunal has dismissed the Appeal of the Revenue 21/05/2020. The Ld. Counsel for the assessee further submitted that, the assessee has already paid the tax along with the applicable interest the assessee has not committed any concealment to initiate the penalty.

4. Per contra, the Ld. DR has relied on the order of the CIT(A).

5. We have heard the parties considered the material on record and gave our thoughtful consideration. From the record it is emerges that the aggregate expense of the assessee at Rs. 10,67,167/- was incurred for supply/purchase of water. The tax auditor did not report any violation in that regard in the audit report issued u/s 44AB of the Act. Accordingly, no disallowance was made qua the said payment u/s 40a(ia) of the Act in the return of income of the assessee. The assessment order has been passed on 31/03/2004 u/s 143(3) of the Act wherein held that the assessee has failed to deduct tax u/s 194C of the Act, the same has been confirmed by the CIT(A). Considering the quantum of the said addition and since the assessee has been granted with sufficient relief, the assessee has not filed the appeal. Pursuant to the order of CIT(A), the assessee has deducted the tax at source @ 1% and deposited the entire TDS amount to the Government Authorities along with statutory interest. Pursuant to the same, the assessee has also claimed expenditure

amounting to Rs. 5,68,610/- and Rs. 4,98,550/- in the Assessment Year 2014-15 and 2015-16 respectively which has been allowed by the authorities.

6. In so far as, penalty and disallowance of Rs. 7,027/- of deduction claimed 80G is concerned, the assessee claimed deduction under 80G aggregating to Rs. 22,527/- being 50% of the donation as under:-

(i)	Donation to Delhi Midtwon Rotary Service Foundation:	Rs.31,000
(ii)	Small donations to other organizations aggregating to :	<u>Rs.14,054</u>
	Total	: <u>Rs.45,054</u>

After the assessment order disallowed the aforesaid deduction on the ground that, no documentary evidence were filed, the CIT(A) allowed the deduction qua donation of Rs. 31,000/- (deduction of Rs. 15,000/-) considering the receipt submitted by the assessee. However, disallowed the deduction to the extent of Rs.7,027/-. The Ld. Counsel for the assessee submitted that, the aforesaid donation of Rs. 15,054/- were on account of small/penny donations. Therefore, could not produce the receipt for the same and submitted that, penalty could not be levied merely because of the receipt on the said donations could not be located and furnished. We do agree with the contentions of the Ld. Counsel for the assessee.

7. By looking into the facts and circumstances and the quantum involved in the appeal, we are of the considered opinion that, the assessee has not made any concealment of income to initiate the penalty proceedings. Therefore, we inclined to delete the penalty.

8. Accordingly, we allow the grounds of Appeal by deleting penalty imposed by the A.O which has been confirmed by the CIT(A).

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12<sup>th</sup> July, 2022.

**Sd/-**

**( N. K. BILLAIYA )  
ACCOUNTANT MEMBER**

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated : 12/07/2022

*\*R. Naheed\**

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

