

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA.No.806/Del./2022

Assessment Year 2012-13

The DCIT, Central Circle-17 New Delhi	vs.	Havells India Ltd. 904, 9 th floor, Surya Kiran Building, K.G Marg, Connaught Place, New Delhi 110001 PAN AAACH0351E
(Appellant)		(Respondent)

ITA.No.805/Del./2022

Assessment Year 2013-14

The DCIT, Central Circle-17 New Delhi	vs.	Havells India Ltd. 904, 9 th floor, Surya Kiran Building, K.G Marg, Connaught Place, New Delhi 110001 PAN AAACH0351E
(Appellant)		(Respondent)

For Assessee :	Shri Akshat Jain, CA
For Revenue :	Sh. Avikal Manu, Sr. DR

Date of Hearing :	14.02.2023
Date of Pronouncement :	14.03.2023

ORDER

PER ANIL CHATURVEDI, A.M.

The above appeals by Revenue are directed
against the separate Orders of the Ld. CIT(A)-27, Delhi,

dated 16.03.2018 in Appeal No.CIT(A),Delhi-22/10012/2018-19 for A.Y. 2012-13 and order dated 28.03.2019 in Appeal No. CIT(A),Delhi-27/10004/2019-20 for A.Y. 2013-14.

2. Before us at the outset, Ld. DR submitted that though the present appeals are for A.Y. 2012-13 and 2013-14, but however the facts of both the cases are identical except for the assessment year and the penalty involved. He therefore submitted that the submissions made by him for arguing appeal for one year would be applicable to the other appeal also. Ld. AR did not object to the aforesaid submissions by Ld. DR. In view of the aforesaid facts we proceed to dispose of both the appeals by consolidated order but however refer to the facts in ITA 806/Del/2022.

2.1. The assessee is a company stated to be engaged in the business of manufacturing of switchgears, electrical goods and bath fittings etc. Assessee had filed a return of income for A.Y. 2012-13 declaring total income at Rs. 218,01,71,723/- . The case of the assessee was selected for

scrutiny and consequently assessment was framed u/s. 143(3) of the I.T. Act, 1961 and the total income was determined at Rs. 227,43,00,686/- vide order dated 25.02.2016. While determining the total income following additions were *inter alia* made by AO:-

(i)	Adjustment of Rs. 3,80,00,000/- on account of Arms Length Price of International Transactions
(ii)	Rs. 3,89,27,433/- on account of addition made under Shahenshah Sale Incentive Scheme.
(iii)	Reduction of claim of deduction u/s. 80IC of Rs. 14,04,654/-
(iv)	Disallowance of Rs. 2,06,02,623/- on account of disallowance of education cess and secondary higher education cess
(v)	Disallowance of depreciation of Rs. 1,41,343/-

The AO was of the view that with respect to the aforesaid additions that were made, assessee had furnished inaccurate particulars of its income and therefore liable for penalty u/s. 271(1)(c) of the Act. He thereafter vide order dated 16.03.2018 passed u/s. 271(1)(c) of the Act, levied penalty of Rs. 3,21,45,230/-.

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A). CIT(A) noted that even after the additions that have been finally

made by the AO, the assessee is subjected to pay taxes u/s. 115JB of the Act, and therefore the case of the assessee was covered by Circular No. 25 of 2015 dated 31.12.2015 issued by CBDT which *inter alia* states that where Income Tax payable on total income as computed under the normal provisions of the Act is less than the tax payable on the book profit u/s. 115JB of the Act, then penalty u/s. 271(1)(c) of the Act, is not attracted with reference to the additions/disallowances made under the normal provisions. He therefore, following the aforesaid circular issued by CBDT, deleted the penalty levied by AO.

3. Aggrieved by the order of the CIT(A), the Revenue is now in appeal and has raised the following grounds:-

1. The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.

2. The Ld. CIT(A) has erred in fact that after addition, the assessment was completed on normal provision, as the tax payable on normal provision is higher than tax payable on the MAT provision.

3. The Ld. CIT(A) has erred in observing that adjustments were made under the normal computation of income only, whereas adjustments were made under MAT provisions u/s 115JB of the Income Tax Act, 1961

also vide order u/s 250/154/154/143(3) dated 20/03/2017.

4. The Ld. CIT(A) has erred in relying on CBDT Circular No. 25/2015 dated 31.12.2015 which is not applicable in the instant case as additions were also made under MAT provisions u/s 115JB of the I. T. Act, 1961.

5. The Ld. CIT(A) has erred in cancelling the penalty relying upon CBDT Circular No. 25/2015 dated 31/12/2015, as this provisions of Explanation 4 to Section 271(1)(c) of the Income Tax Act, 1961 have been amended w.e.f. 01/04/2016.

6. a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.

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

4. Similar grounds have been raised by the Revenue in A.Y. 2013-14.

5. Before us the Ld. DR submitted that though the Revenue is raised various grounds but the sole grievance of the Revenue is about the deleting of penalty levied by AO u/s. 271(1)(c) of the Act.

6. Before us Ld. DR took us through the order of AO and supported the order of AO.

7. Learned AR on the other hand reiterated the submissions made before lower authorities and submitted that the final tax payable by the assessee has been determined on the basis of u/s. 115JB of the Act. He submitted that CBDT vide circular dated 31.12.2015 has held that where the Income Tax is payable on the basis of book profit u/s. 115JB of the Act, then penalty u/s. 271(1)(c) is not attracted with reference to the additions disallowances made under normal provisions. He thus supported the order of CIT(A).

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the levy of penalty u/s. 271(1)(c) by the AO but deleted by CIT(A). We find that the CIT(A) after considering the submissions of the assessee has given a finding that assessee was subjected to pay taxes u/s. 115JB of the Act, even after taking into consideration all the additions made by the AO in the assessment order. He thereafter by relying on the CBDT circular (supra) held that the penalty u/s. 271(1)(c) was not leviable. Before us

Revenue has not pointed to any fallacy in the findings of CIT(A) nor has demonstrated that the reliance placed by CIT(A) on the CBDT circular (supra) is misplaced. In such a situation we find no reason to interfere with the order of CIT(A) and thus **grounds of Revenue is dismissed.**

9. **Thus the appeal of Revenue is dismissed.**

10. Before us both the parties have admitted that the facts of the case in A.Y. 2012-13 and 2013-14 are identical. We have herein-above for the reasons stated have dismissed the appeal of Revenue for A.Y. 2012-13. We for similar reasons **dismiss the appeal of the Revenue for 2013-14.**

10. **To sum-up, both the appeals of the Revenue are dismissed.**

Order pronounced in the open court on 14.03.2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 14th March, 2023
NV/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "B" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.