

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Though Video Conferencing)

ITA No. 2362/Del/2019  
(Assessment Year: 2012-13)

Sequel Alloys & Wires Pvt. Ltd, Plot No. 72, Sreshta Vihar, GF, Vikas Marg Exten, New Delhi PAN: AAICS5081J	Vs.	DCIT, Circle-23(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Piyush Kaushik, Adv
Revenue by:	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	15/09/2020
Date of pronouncement	17/09/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-XXV, New Delhi where penalty levied by the Id AO u/s 271(1)(c) as per order dated 30.03.2017 of Rs. 278024/- was challenged before Id CIT (A) who confirmed it.
2. The assessee has raised the following grounds:-
  - "1. *That on the facts and circumstances of the case and in the Law, the CIT (A) has grossly erred in confirming the penalty of Rs. 2,78,024 u/s 271(1)(c) as imposed by the AO.*
  2. *That on the facts and circumstances of the case and in the Law the penalty of Rs. 2,78,024 imposed by the AO is bad in law on account of the reason that neither the assessment order nor the penalty notice u/s 271(1)(c) and neither the penalty order u/s 271(1)(c) clearly specifies the charge for which penalty is levied i.e. whether the penalty is initiated for concealment of income or furnishing inaccurate particulars of income since both the charges carry different connotations showing a clear non application of mind on part of the AO while initiating and imposing penalty u/s 271(1)(c) rendering the penalty levy as manifestly bad in law being squarely covered in assessee's favor by the decisions from Apex Court;*

*various High Courts including co-ordinate benches of ITAT under identical circumstances.*

3. *That without prejudice to the aforesaid, the penalty levy of Rs. 2,78,024 as confirmed by the CIT(A) is also unsustainable on the merits of case also."*

3. The only issue in this appeal is whether the penalty u/s 271(1)(c) of the Act amounting to Rs. 278024/- levied by the Id AO and confirmed by the Id CIT(A) is sustainable in law or not.
4. The brief facts of the case shows that the assessee filed its return of income for AY 2012-13 on 29.09.2012 declaring total income of Rs. 4515150/-. The assessee company is having a unit in Noida Special Economic Zone and entitled for deduction of 50% of its income u/s 10AA of the Act. The assessee submitted a requisite certificate of a Chartered Accountant for claim made by it u/s 10AA of the Act. During the course of assessment proceedings, it was found that the assessee has derived income of Rs. 899754/- from sale of scrap and refund of sales tax. The assessee claimed deduction u/s 10AA of the Act @50% on the above sum. Assessee was asked to justify the above claim. The assessee submitted that the above claim is made inadvertently. It offered the income during the course of assessment proceedings and submitted that no penalty proceedings be initiated/levied. The assessment was made on 31.03.2014 u/s 143(3) of the Act. In the assessment order , Id AO initiated the penalty proceedings u/s 271(1)(c) of the Act stating that penalty proceeding was initiated for concealment of income and for furnishing inaccurate particulars of income. The penalty order u/s 271(1)(c) of the Act was also passed on 30.03.2017 wherein a penalty of Rs. 278024/- was levied by the Id AO stating that he is satisfied that this is a fit case for levy of penalty for concealing its income and filing inaccurate particulars of income.
5. The above order was challenged before the Id CIT(A). He also confirmed the penalty as per para No. 5 of the order. The Id CIT(A) heavily relied upon the decision of the Hon'ble Supreme Court in case of Union of India

Vs. Dharmendra Textiles Processor (2008) 13 SCC 369 and Dilip Shroff VS. JCIT 291 ITR 519. Therefore, the assessee is in appeal before us.

6. The Id AR challenged the penalty on the merit as well as on a technical ground that the penalty proceedings initiated by the Id AO are vague. He referred to penalty notice issued u/s 274 of the Act dated 31.03.2014 where none of the twin charges were stuck off. On the merit he contested that there is a certificate of Chartered Accountant certifying the above claim and therefore, claim of the assessee was based on that but found to be non sustainable. Assessee admitted inadvertent error. He relied upon the host of judicial precedents for both these issues.
7. The Id DR also submitted that had the return of the assessee was not selected for scrutiny, the income would have escaped. Therefore, on the merits the penalty is correctly levied. On the issue of technical point raised by the Id AR she submitted that same was not raised before the Id CIT(A), hence cannot be raised here.
8. Both the parties also made lengthy written submissions citing various judicial precedents, which were perused.
9. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case at the time of initiation of the penalty proceedings in the assessment order, the Id AO has initiated it on both the counts of concealment of income as well as of furnishing of inaccurate particulars of income. In the show cause notice u/s 274 dated 31.03.2014 also none of the twin charges were stuck off. In the penalty order also penalty is levied for both the defaults. This ground was also raised as per ground No. 1 of the appeal before the Id CIT(A) however, the Id CIT(A) held that the assessee cannot hide behind the technicalities and rejected the same. We find that issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court dated 02.08.2019 in case of PCIT Vs. Sahara India Insurance Company Ltd in ITA NO. 475/2019. The Hon'ble High Court held that penalty is not sustainable if none of the twin charges in notice u/s 274 of the Act are cancelled/ stuck off. On this issue, it is clear that the penalty levied by

the Id AO is not sustainable in law. Therefore, on this ground only we cancel the penalty levied by the Id AO u/s 271(1)(c) of the Act amounting to Rs. 278024/- and reverse the orders of the lower authorities. Accordingly, ground Nos. 1 and 2 of the appeal of the assessee are allowed.

10. As we have already allowed the appeal of the assessee cancelling the above penalty levied u/s 271(1)(c) on the issue of defective notice, we do not find any requirement of dealing the merits of the case of the assessee.
11. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 17/09/2020.

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 17/09/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	16.09.2020
Date on which the typed draft is placed before the dictating member	16.09.2020
Date on which the typed draft is placed before the other member	17.09.2020
Date on which the approved draft comes to the Sr. PS/ PS	17.09.2020
Date on which the fair order is placed before the dictating member for pronouncement	17.09.2020
Date on which the fair order comes back to the Sr. PS/ PS	17.09.2020
Date on which the final order is uploaded on the website of ITAT	17.09.2020
date on which the file goes to the Bench Clerk	17.09.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	