

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3537/Del/2016
(Assessment Year : 2008-09)

DCIT Circle – 11(1), New Delhi PAN No. AAACH 0812 J (APPELLANT)	Vs.	M/s. Hero MotoCorp Ltd., 34, Basant Lok, Vasant Vihar, New Delhi (RESPONDENT)
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Assessee by	Shri Prakash Dubey, Sr. D.R.
Revenue by	Shri Gaurav Jain, Adv. Ms. Manisha Sharma, Adv.

Date of hearing:	15/07/2021
Date of Pronouncement:	26/07/2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 02.03.2016 of the Commissioner of Income Tax (Appeals)-16, New Delhi relating to Assessment Year 2008-09.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company who filed its return of income for A.Y. 2008-09 on 26.09.2008, declaring total income of Rs.1307,37,84,038/-. Thereafter, assessee filed revised return of income with increased claim of TDS on 05.03.2009. Thereafter, the assessment was framed u/s 143(3) r.w.s 144C of the Act and the total income was determined at Rs.4585,87,70,541/- by making various additions/ disallowances amounting to Rs.3355,12,31,399/-. Aggrieved by the final assessment order, Assessee filed appeal before ITAT. ITAT vide order dated 13.06.2014 deleted additions/ disallowances to the extent of Rs.3279.25 crores, additions/ disallowances to the extent of Rs.68.60 crores were set aside to the file of AO for reconsidering the matter in light of the directions in the order and confirmed the additions/ disallowances to the extent of Rs.4.86 crores. On the additions/ disallowances confirmed by ITAT and some other additions/ disallowances which were suomoto surrendered by the assessee during the assessment proceedings. AO vide penalty order passed u/s 271(1)(c) of the Act dated 26.02.2015 levied the penalty of Rs.2,47,28,481/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 02.03.2016 (Appeal No.192/15-16) granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds of appeal:

1. *“Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 1,32,29,000/- on*

disallowance of deduction of Rs. 3.89 crores claimed by the assessee u/s 80IA of the Act which was not tenable as per law and the same was upheld by the Hon'ble IT AT in the preceding years as well as the year under consideration?

2. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 11,38,000/- on disallowance of additional depreciation of Rs. 33.47 lacs u/s 32(1)(ia) which was not tenable as per law and the same was upheld by the Hon'ble ITAT in the preceding years as well as the year under consideration?*
3. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 10,27,000/- on disallowance of deduction of Rs. 30.20 lacs claimed by the assessee u/s 35(1)(iv) which was not tenable as per law and the same was upheld by the Hon'ble IT AT in the preceding years as well as the year under consideration?*
4. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 12,000/- on disallowance of insurance charges of Rs. 33,852/- paid on the time of acquisition of vehicles?*
5. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 49,000/- on disallowance of expenditure incurred on motor bikes given to various contestants at TV shows, amounting to Rs. 1.43 lacs u/s 40(a)(ia) which was not tenable as per law and the same was upheld by the Hon'ble IT AT in the year under consideration & the preceding years?*
6. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 10,73,000/- on disallowance of expenditure of Rs. 21.81 lacs incurred on account of payments to hotels for banquet hall bookings charges and disallowance of expenditure of Rs. 9.78 lacs towards meal expenses at the time of hiring of halls in hotel, u/s 40(a)(ia) for failure to deduct tax at source u/s 1941 and 1940 of the Act?*
7. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 8,000/- on disallowance of generator hire charges, amounting to Rs. 23,000/- u/s 40(a)(ia) for alleged failure to deduct tax source u/s 1941?*

8. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 2,85,000/- on disallowance of deduction of Rs. 7.60 lacs on account of non deduction of TDS on provision made for freight inwards incurred on purchases?*
9. *Whether on the facts & the circumstances of the case, Ld. CIT(A) was correct in deleting the penalty of Rs. 12,000/- on disallowance of deduction of Rs. 35,000/- on account of non deduction of TDS on provision made for freight inwards incurred on purchases?*
10. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."*

5. Before us, at the outset, Learned DR submitted that the issue in the various grounds raised by the Revenue is with respect to penalty levied by AO u/s 271(1)(c) of the Act and which was deleted by CIT(A). Before us, Learned DR supported the order of AO.

6. Learned AR on the other hand reiterated the submissions made before the lower authorities. He thereafter pointed to the summary chart placed in the paper book. From the summary chart he pointed that the various additions/disallowances were made by AO and these were also sustained by the Tribunal. Against the order of Tribunal whereby the additions have been upheld by Tribunal, assessee has challenged the order of Tribunal before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court in ITA No.668/2014 order dated 19.11.2015 has admitted the appeal of the assessee by holding that substantial question of law was involved on those issues. Learned AR therefore submitted

that when the High Court has admitted the appeal of the assessee by holding that substantial question of law was involved, it would indicate that the assessee's claim were debatable and the additions/ disallowance that were sustained were on account of bonafide differences of opinion and therefore it does not attract the provisions of Section 271(1)(c) of the Act. In support of his contentions, he also relied on the decision rendered by Hon'ble Delhi High Court in the case of PCIT vs. Harsh International Pvt. Ltd. (2021) 431 ITR 118, wherein Hon'ble High Court has observed that if the quantum order has been challenged before the High Court and High Court has framed substantial question of law in the appeal then it would show that the alleged concealment is not final and the issue is disputable and the penalty levied by the AO in such case cannot survive. He therefore submitted that CIT(A) has rightly deleted the penalty imposed by AO. He thus supported the order of CIT(A).

7. We have heard the rival submissions and perused the material on record. The issue in the present grounds are with respect to levy of penalty u/s 271(1)(c) of the Act. It is an undisputed fact that the various additions were made by the AO and on the additions which have been upheld by Tribunal AO has levied penalty u/s 271(1)(c) of the Act. It is also an undisputed fact that against the quantum additions which have been upheld by the Hon'ble Tribunal, assessee has preferred appeal before the Hon'ble Delhi High Court and the Delhi High Court has admitted

the appeal of the assessee on the ground that the issue involves substantial question of law. We find that Hon'ble Delhi High Court in the case of PCIT vs. Harsh International Pvt. Ltd. (supra) has held that concealment of income can be levied only in cases where the concealment has been proved. It has further observed that if the quantum order itself has been challenged before the Hon'ble High Court and the High Court has framed substantial question of law in appeal then it would show that the alleged concealment is not final and the issue is disputable and the penalty levied by Assessing Officer in such cases cannot survive. We are of the view that the ratio of the aforesaid decision would be squarely applicable to the facts of the present case. In such a situation, relying on the aforesaid decision in the case of Harsh International Pvt. Ltd. (supra), we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue are dismissed.**

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.07.2021

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Date:- 26.07.2021
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Copy forwarded to:

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

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI