

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3989/Del/2018
(Assessment Year: 2010-11)

ACIT, Central Circle-15, New Delhi	Vs.	Nagar Dairy Pvt. Ltd, 3/10 Paschimi Marg, Vasant Vihar, New Delhi PAN: AABCN7304C
(Appellant)		(Respondent)

Revenue by :	Shri Gaurav Pundir, Sr. DR
Assessee by:	Shri Divyansh Jain, CA
Date of Hearing	27/7/2021
Date of pronouncement	27/07/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT(A)-XXVI, New Delhi 16.03.2018 for Assessment Year 2010-11, wherein, the penalty levied u/s 271(1)(c) of the Act vide order dated 20.03.2017 by the Id Asstt. Commissioner of Income Tax, Central Circle-15, New Delhi was deleted.
2. Briefly stated the facts shows that a search and seizure action was carried out in the case of the Assessee on 17.09.2010. The assessment u/s 144 read with section 153C was completed on 28.03.2013 at the total income of Rs. 2,90,63,39,728/- which was later on rectified at an income of Rs. 1,82,29,24,640/- against the return of income was Rs. 1,52,44,063/-. The addition was made in the hands of the assessee being disallowance of various expenditure. The

penalty proceedings were initiated by issue of notice u/s 274 of the Act read with section 271(1)(c) of the Act dated 28.03.2013. Initially the penalty proceedings were kept in abeyance as the Assessee has preferred an appeal against the addition. Substantially, the addition were deleted by the Id CIT(A). Therefore, after that a further notice was issued to the Assessee and Assessee submitted a reply stating that substantial relief has been granted by the Id CIT(A) however, addition of Rs. 42,13,198/- was sustained. The disallowance was made out of transportation expenditure as the Assessee could not produce the log book of running of the vehicle and there were certain defect in the vouchers. 30% of the total transportation charges was disallowed out of which , On appeal before the Id CIT(A)Rs. 14,53,659/- was sustained. However, there was a disallowance of Rs. 14,15,900/- out of other expenses was made by the Id AO which was restricted to Rs. 1,01,028/- by the Id CIT(A). On this disallowances a penalty proceedings initiated and continued. The Assessee submitted before the Id AO various legal objections however, same were rejected and the Id AO held that the Assessee has concealed its income to the extent of Rs. 49,50,693/- and therefore, he levied a penalty of Rs. 16,92,938/- by order dated 20.03.2017.

3. The Assessee preferred an appeal before the Id CIT(A) wherein, detailed submission were made and the Id CIT(A) after considering the submission of the Assessee deleted the penalty noting that the penalty has been levied on all adhoc disallowance and penalty is not tenable on adhoc disallowances. He further held that the issues are prima facie debatable and further the notice issued u/s 274 of the Act did not specify the specific limb of section 271(1)(c) of the Act and therefore, the issue is squarely covered by the order of the Hon'ble Karnataka High Court and where the SLP is dismissed by the Hon'ble Supreme

Court in case of CIT Vs. SSA's Emerald Meadows 73 Taxmann.com 248.

4. The Id AO is aggrieved with the order has preferred this appeal.
5. The Id DR vehemently supported the order of the Id AO.
6. The Id AR of the Assessee supported the order of the Id CIT(A).
7. We have carefully considered the rival contentions. We agree with the findings of Id CIT(A) that the issues on which penalty is levied are prima facie debatable and further disallowances are also on adhoc basis, thus it cannot be said that Assessee has furnished inaccurate particulars of its income or has concealed its income. Further, it is categorical finding of the Id CIT(A) that the notice issues u/s 274 read with section 271(1)(c) of the Act did not specify under which limb the penalty is levied and therefore, the penalty order of Id AO is not sustainable in view of the decision of the Hon'ble Supreme Court relied upon by the Id CIT(A). In view of this we uphold the orders of the Id CIT(A) and dismissed the appeal of the revenue.

Order pronounced in the open court on 27/07/2021.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:27/07/2021
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi