

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 1252/Del/2017
(Assessment Year: 2012-13)

M/s. Jay Bee Laminations Pvt. Ltd., P. No. – 5, 2 nd Floor, Prem Nagar Market, Tyagraj Nagar, New Delhi – 110 003. PAN : AAACJ1868Q	Vs.	DCIT, Circle : 13 (2), New Delhi.
(Appellant)		(Respondent)

Assessee by :	None
Department by :	Ms. Anima, Sr. D.R.;
Date of Hearing	12/07/2021
Date of pronouncement	12 /07/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

01. This appeal is filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-5, New Delhi, dated 16.01.2017, for assessment year 2013-14, confirming the penalty levied of Rs. 50,540/- by the Dy. Commissioner of Income Tax, Circle 13 (2) New Delhi, as per order under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) dated 28.07.2015. The assessee is aggrieved with the confirmation of the above penalty and has preferred this appeal before us. All the grounds of appeal also revolve around the solitary issue.
02. The facts of the case show that assessee is a company engaged in the business of manufacturing and job work of CRGO silicon electrical steel lamination. It filed its return of income on 27.09.2012 declaring

income of Rs.1,67,05,630/-. The case was picked up for scrutiny and assessment under Section 143(3) of the Act was passed on 31.01.2016 by the ld. Assessing Officer determining total income of Rs. 1,68,54,310/-. The ld. AO made following two disallowances. The first disallowance is on account of foreign travel expenditure of Rs.1,10,894/-. The fact shows that assessee has claimed expenditure of Rs.2,21,787/-. The assessee was asked to produce the details along with vouchers. Assessee filed the details, but did not produce the vouchers. The Assessing Officer held that there could be a possibility of some expenditure of personal nature, therefore, he disallowed 50% of the same i.e. Rs.1,10,894/-. The second disallowance is of Rs.37,787/- on account of difference in income shown in the profit and loss account and receipts declared in 26AS. The ld. Assessing Officer found that there is a difference of Rs.22,537/- on account of interest from ICICI Bank and Rs.15,250/- in job work income from BHEL. Thus, the addition of Rs.37,787/- was made to the income of the assessee.

03. The ld. Assessing Officer at the time of passing assessment order recorded a satisfaction that assessee has furnished inaccurate particulars of income and, therefore, penalty under Section 271(1)(c) of the Act was initiated for submission of inaccurate particulars. The fact shows that assessee did not prefer any appeal and, therefore, penalty proceedings were proceeded with. The assessee submitted during the course of penalty proceedings that assessee has not received any such interest of Rs. 22,537/- from ICICI Bank and this could be because of mistake on the part of the ICICI Bank on punching wrong Permanent account number. With respect to the job work of BHEL assessee submitted that assessee has not done any job work of BHEL. Assessee also submitted that there could not be any reason that assessee will do job work of Rs.15,250/- of such a big company. The ld. Assessing Officer rejected the explanation of the assessee holding that assessee did not bring anything on record; therefore, the penalty is leviable. He held that had there not been any scrutiny, these additions / disallowances could not have been made.

According to him this act has resulted in the decrease of the tax liability, which is not permitted under the law. Therefore, he held that assessee has concealed its income and furnished inaccurate particulars of its income to the tune of Rs.1,48,681/- and concealed such income from the taxation. This finding was recorded in para No. 4 of the penalty order. In para No. 5 he levied a penalty on concealed income of Rs.1,48,681/- @ minimum penalty of hundred per cent of Rs.50,540 /-. The penalty order was passed on 28.07.2015.

04. This penalty order was challenged before the Id. CIT (Appeals) who confirmed it. The reason for confirmation was that assessee could not produce vouchers of the foreign travel expenditure and, therefore, expenditure could not be substantiated and the case of the appellant fell within Explanation (1) to Section 271(1) (c) of the Act. He categorically held that assessee has not denied having done the job work of BHEL and earning of interest from ICICI Bank.
05. The assessee is aggrieved with that order and has preferred appeal. Despite notice, none appeared on behalf of the assessee. On earlier occasion also i.e. 15.02.2021 none appeared on behalf of the assessee and, therefore, this appeal is decided on its merits as per facts available on record.
06. The Id. Sr. DR vehemently supported the orders of the lower authorities.
07. We have carefully considered the rival contentions. The addition / disallowance are on account of difference of income of interest of ICICI Bank and job work income from BHEL. The assessee has denied that it has not received any interest from ICICI Bank as well as it has not done any job work of BHEL. The difference between the income from the profit and loss account and Form No. 26AS could be a trigger point for making an addition in the hands of the assessee. However, without any further investigation when assessee specifically denied having received such income and when the Revenue does not have any evidence that assessee itself has received income, we do not find any reason that such income can be considered to be concealed income of the assessee.

08. With respect to the second issue of disallowance of foreign travel expenditure, it is evident that assessee has furnished the details of foreign travel expenditure, however, could not produce the vouchers and, therefore, Assessing Officer himself on assumption held that there may be a possibility of personal expenditure. Thus, 50% of such expenditure was allowed and 50% disallowed on ad-hoc basis. Mere disallowance of expenditure can never result into penalty under Section 271(1) (c) of the Act that too on ad-hoc basis. The ld. CIT (Appeals) confirmed the penalty stating that assessee has not denied that it has received such income whereas the record shows that assessee denied having received any such income categorically. It is further the fact that in the assessment order the Assessing Officer initiated penalty proceedings on the charge of furnishing of inaccurate particulars whereas in the penalty order he levied penalty as per para No. 4 of his order of concealment as well as furnishing of inaccurate particulars. The ld. CIT (Appeals) also confirmed the penalty at para 3.7.7 of her order that the Assessing Officer has correctly levied the penalty both under the main as well as the deeming provisions of Section 271(1)(c) of the Act. The assessee was only given an opportunity to explain with respect to the charge of furnishing of inaccurate particulars of income only. In view of the above facts, we allow the appeal of the assessee reversing the order of the ld. Lower authorities and direct the Assessing Officer to delete the penalty of Rs.50,540/- levied under Section 271(1) (c) of the Act.

09. The appeal of the assessee is allowed.

Order pronounced in the open court on 12 /07/2021.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 12/07/2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	12.07.2021
Date on which the typed draft is placed before the dictating member	12.07.2021
Date on which the typed draft is placed before the other member	12.07.2021
Date on which the approved draft comes to the Sr. PS/ PS	12.07.2021
Date on which the fair order is placed before the dictating member for pronouncement	12.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	12.07.2021
Date on which the final order is uploaded on the website of ITAT	12.07.2021
date on which the file goes to the Bench Clerk	12.07.2021
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	