IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No.-6247/Del/2017
(Assessment Year:2006-07)

Indo Hongkong Industries (P) Ltd., B-56, Shivalik Malviya Nagar New Dlehi.	**Vs.**	DCIT, Circle 12(1) New Delhi.

PAN No. AAACI0265N

Appellant	**Respondent**

Assessee by Sh. Sobagya Agarwal, Adv.
Revenue by Sh. Gaurav Dudeja, Sr. DR

Date of hearing: 30.12.2020
Date of Pronouncement : 30.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 30/08/2017 in appeal No. 67/2017-18/CIT (A), New Delhi passed by the learned Commissioner of Income Tax (Appeals)-22 Delhi ("Ld. CIT(A)"), in the case of M/s Indo Hong Kong industries (P) Ltd ("the assessee") for the assessment year 2006-07 confirming the penalty, assessee preferred this appeal.

2. Brief facts of the case are that for the assessment year 2006-07, the assessee filed the return of income on 30/11/2006 showing a total income

of Rs. 12, 48, 000/-and during the course of assessment proceedings, learned Assessing Officer made an addition of Rs. 1, 19, 56, 652/-on account of default Revenue expenditure, administrative expenses, business promotion and depreciation. The claim of the assessee that the default Revenue expenses to the tune of Rs. 1, 00, 43, 676/-debited in P&L Account was denied and such an expenditure was inadmissible but the learned Assessing Officer allowed depreciation on such account by treating it as capital expenditure. Proceedings under section 271(1)(c) of the Act were initiated simultaneously and by order dated 21/3/2016 passed under section 271(1)(c) of the Act, learned Assessing Officer levied a penalty of Rs. 33, 80, 701/-.

3. Aggrieved by the same, assessee preferred appeal before the Ld. CIT(A) and contended that though the Ld. CIT(A) in the quantum appeal observed that there is no concept of deferred Revenue expenditure under the Income Tax Act, 1961, the Hon'ble Apex Court in the case of Taparia tools Ltd vs. JCIT held that in cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of "matching concept" is satisfied, which up to now has been restricted to the cases of debentures. Basing on such plea and also contending that the assessee did not conceal any income nor did furnish any inaccurate particulars, assessee prayed to delete the penalty. Ld. CIT(A) however did not agree with the assessee and referring to the decision of theHon'ble Delhi High Court in the case of CIT vs. angel technologies Ltd TS 743 HC 2014 (Delhi) observed that the assessee would normally rely upon legal opinion of chartered accountants, who was required to audit account of company and also submit an audit report and therefore, the claim of the

assessee in respect of deferred Revenue expenditure amounts to furnishing of inaccurate particulars. Hence this appeal by the assessee.

4. Ld. DR relied upon the orders of the authorities below and submitted that the very claim preferred by the assessee towards deferred Revenue expenditure itself is something false, and such false statement even after having the expert opinion amounts to furnishing of inaccurate particulars and therefore the order of the Ld. CIT(A) does not warrant any interference in this appeal; whereas it is the contention on behalf of the assessee that there is no concealment of any income or expenditure even according to the Revenue, but it is only the difference of opinion between the assessee and the learned Assessing Officer that resulted in the addition. It is further submitted that by treating the expense as capital in nature, as a matter of fact, learned Assessing Officer allowed depreciation at 10%, whereas according to the assessee basing on the contract 50% of Revenue expenditure is claimed in respect of the block of initial 3 years and the remaining 50% for the subsequent black of 3 years and it is only a matter of the percentage of expenditure allowable but not any substantial difference is there.

5. We have gone through the record in the light of the submissions made on either side. There is no dispute in respect of facts. According to the assessee during the assessment year 2005-06, the assessee incurred a sum of Rs. 4, 43, 59, 569/-on furnishing, making workstations and providing certain infrastructure as per the specification given by one customer who had taken such facilities on hire for a period of 35 months; that the agreement was also had a clause as to the lockin period of 36 months at 50% of the guaranteed amount and basing on the opinion received from

one of the leading and the renowned law firms, namely, M/s in some part Iyengar associates and also keeping in nature of expenses, it was estimated that all the fixtures and fittings would have a negligible value after the use of the present occupant, and decided to write of such expenses over a period of 71 months, that is, 1st to 35 months in full and half of next 36 months relating to lock in period, on the proportionate ratio which came to Rs. 8, 36, 973/-for the 1st 36 months and Rs. 4, 18, 486.50 for the balance 36 months for 50% lock in period; and that accordingly while finalising the Balance Sheet of the company relating to the assessment year 2006-07 a sum of Rs. 1, 00, 43, 676/-was debited in the P & L account under the head and "deferred Revenue expenses".

6. Learned Assessing Officer however did not agree with this treatment of the expense by the assessee and while treating it as capital expenses and while disallowing the entire Revenue expenses, allowed depreciation at 10%. It is therefore, clear that it's not the case of the Revenue that the assessee concealed any income or expenditure but they have only claimed the expense as deferred Revenue expenses whereas according to the learned Assessing Officer, it has to be treated as capital expenses while allowing the depreciation. According to the assessee they have allowed 50% expenses for the 1st block of 3 years and balance 50% in the following block of 3 years, which roughly works out to 16% per annum, and therefore the differences worked out only to 6%.

7. It is contended by the Ld. AR that though there is no concept of deferred Revenue expenditure under the Act, in Taparia Tools Ltd (supra) the Hon'ble Apex Court observed that where the assessee wants to spread the expenditure over a period of ensuing years, it can be allowed only if the

principle of matching concept is satisfied, which upon now has been restricted to the cases of debentures. Further according to the assessee they have obtained the opinion of M/s are some part Iyengar associates as to the treatment to be given to his expense. Further, the difference to be allowed is only 6%.

8. On a careful consideration of the facts before us, we are satisfied that it's not the case of concealment of income nor of furnishing of any inaccurate particulars but it is only a case of difference of opinion between the assessee and the learned Assessing Officer in respect of the treatment to be given to a particular expenditure. Further the assessee does not stand to much gain by this differential treatment also. The essential ingredients to attract the provisions under section 271(1)(c) of the Act do not seem to have been existing in this case.

9. In this context we would like to refer to the decision of the jurisdictional High Court in CIT vs. DCM Limited(2013) 359 ITR 0101 (Delhi), wherein the Hon'ble High Court of Delhi held that law does not bar or prohibit an assessee for making a claim, which he believes may be accepted or is plausible; that when such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law; that full probe and appraisal is natural and normal; that threat of penalty cannot become a gag and/or haunt an assessee for making a claim which may be erroneous or wrong, when it is made during the course of the assessment proceedings; that normally, penalty proceedings in such cases should not be initiated unless there are valid or good grounds to show that factual concealment has been made or inaccurate particulars on facts were

provided in the computation. Law does not bar or prohibit a person from making a claim, when he knows the matter is going to be examined by the Assessing Officer.

10. In CIT vs Reliance Petroproducts Pvt Ltd**[**2010] 322 ITR 158 Hon'ble Apex Courtheld that when the assessee preferred a claim, it was up to the authorities to accept its claim in the Return or not, but merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty under Section 271(1)(c) of the Act. It was further held that if the contention of the Revenue is accepted, then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c) and that is clearly not the intendment of the Legislature.

11. For the foregoing reasons, we are of the considered opinion that there is no basis for the authorities below to levy are sustained the penalty and the same has to be deleted. We accordingly allow the appeal and delete the penalty levied by the learned Assessing Officer.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court immediately after the conclusion of the hearing in the Virtual Court on 30/12/2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated:**30/12/2020**
*Kavita Arora, Sr. PS

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI