

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No. 4886/Del/2013
Assessment Year 2007-08

ACIT Circle 1 (1) Gurgaon (Appellant)	vs. M/s.Beekman Heix India Consulting P. Ltd. 310, A-Block, 3 rd Floor, Iris Tech Park, Sohna Road, Sector-48 Gurgaon (PAN AACCB88655R) (Respondent)
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Appellant by	:	Smt. Parvinder Kaur, DR
Respondent by	:	Shri Deepak Malik, Advocate

ORDER

PER GEORGE GEORGE K, JUDICIAL MEMBER

This appeal at the instance of the department is directed against CIT(A) order dated 21.6.2013. The relevant assessment year is 2007-08.

2. The solitary issue that arises for our consideration is whether the CIT(A) is justified in deleting the penalty imposed u/s 271(1)(c) of the Act amounting to Rs. 4,37,711/-.

3. Briefly stated the facts of the case are as follows :-

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That assessment u/s 143(3) was completed on 19.11.2009 at total income of Rs. 1,65,71,920/- whereby the AO made the following disallowances :-

- (i) Call option fees of Rs. 53,12,500/- was disallowed in full.
- (ii) Feasibility study charges of Rs. 11,93,827/- was treated as mortizable expenses u/s 35D and 4/5th of these were disallowed.
- (iii) Disallowance of Rs. 2,13,126/- u/s 14A

4. The assessee preferred an appeal against the assessment order before the Ld. CIT(Appeals)-V, New Delhi who vide order dated 22.02.2011 in appeal No 78/09- 10 deleted the disallowances mentioned in point no. 1 above and upheld the disallowances mentioned in points no. 2 and 3 above.

5. Subsequently, the Assessing Officer levied penalty u/s 271(1)© amounting to Rs. 4,37,711/- on 28.03.2011. Against the penalty order the assessee preferred an appeal before the Ld. CIT(A) who vide Its order dated 21.6.2013 deleted the entire penalty holding that there is no element of concealment in cases where the assessee has claimed certain expenses as deductible and those expenses have subsequently been disallowed by the A.O. Ld. CIT(A) placed reliance on decision in CIT vs Reliance Petro products Ltd. 230 CTR 320.

6. The revenue being aggrieved is in appeal before us raising the following grounds :-

- i) "Whether on the facts and circumstances of the case, Ld. CIT(A) was right in deleting the penalty u/s 271(1)(c) by holding that assessee cannot be*

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said to have concealed its income in cases where disallowance of expenses has been made by the AD. Ld. CIT(A)'s view is not conformity with the view taken by jurisdiction High Court in the case of CIT vs Rubber Udyog Vikas P. Ltd. 335 ITR 558."

- ii) "Whether on the facts and circumstances of the case, Ld. CIT(A) was right in ignoring the fact that in the present case, assessee had wrongly claimed deduction while being aware of well settled legal position, in which case penalty u/s 271(1)(c) is attracted as laid down in CIT vs Rubber Udyog Vikas P. Ltd, 335 ITR 558."*
- iii) "The appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal."*

7. Ld. Authorised Representative reiterated the assessee's submissions made before the Income Tax Authority and supported the findings of the CIT(A).

8. We have heard rival submissions and perused the material on record. The CIT(A) has made threadbare analysis of disallowance of expenditure made in the quantum assessment which had resulted in the imposition of penalty u/s 271(1)(c) of the Act and had come to a correct conclusion that two disallowance of expenditure is only an incorrect claim and does not amount to concealment of income. The conclusions /findings of the CIT(A) have not been dispelled by the revenue. The CIT(A)'s reliance on the various case laws on the subject is apt to the facts of this case. The revenue in its grounds of appeal relied on the case of CIT vs. Rubber Udyog Vikas (P) Ltd. 335 ITR 558 (2011 (P&H)). This decision has been taken note of by CIT(A) at para 3.8 of the impugned order. The dictum laid down in case of Rubber Udyog Vikas (P) Ltd. is that incorrect claim would not

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tantamount to furnishing of inaccurate particulars unless it is established that assessee has acted with malafide intention. The decision relied on by the revenue is in no way helpful to the case of the revenue. On the contrary it help the assessee's case. For the aforesaid reason, we are of the view that CIT(A)'s order is correct and in accordance with law and no interference is called for.

8. In the result appeal filed by the revenue is dismissed.

This decision was pronounced in the Open Court on 18th July, 2014.

sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K)
JUDICIAL MEMBER

Date 18th July, 2014

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Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order
Asstt. Registrar, ITAT