

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.7489/Del/2017 & 1598/Del/2020
Assessment Year: 2014-15 & 2014-15

Priyamda Media & Infotainment Private Limited D-47, Gulmohar Park, New Delhi-110049 PAN No.AAECPP8504F	Vs.	DCIT Circle – 20 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Gautam Jain, Advocate Sh. Parth, Advocate
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	12/12/2023
Date of Pronouncement:	18/12/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.7489/Del/2017 and 1589/Del/2020 are two separate appeals by the assessee preferred against two separate orders of the CIT(A)-7, New Delhi dated 15.10.2017 and 24.02.2020 pertaining to A.Y. 2014-15.

ITA No.7489/Del/2017 (A.Y. 2014-15)

2. ITA No.7489/Del/2017 is the appeal against the additions made in the assessment order dated 20.12.2016 framed u/s. 143 (3) of the Act and ITA No.1598Del/2020 is the appeal against the levy of penalty u/s. 271 (1)(c) of the Act on the additions made in the assessment order.

3. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

4. Briefly stated the facts of the case are that the assessee is engaged in the business of News Network, broadcasting and telecasting. The return for the year was electronically filed on 29.11.2014 declaring loss of Rs.4,47,68,848/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

5. While scrutinizing the return of income the AO noticed sundry payable in the balance sheet and asked the assessee to file confirmation of sundry creditors. The assessee showed its inability to file the confirmation. Notice u/s. 133 (6) of the Act was issued. The AO summarized the situation :-

S. No.	Name	PAN	Balance as on 31.03.2014	Status of reply of notice issued u/s 133(6)	Remarks
1.	India sign Pvt. Ltd.	AAACI9379R	Rs. 58,60,570/-	unserved	Total credit amount of Rs. 58,60,570/- is unconfirmed
2.	Axom Communication	AAKCA1364Q	Rs.1,51,38,061/-	Balance as per their books of account is 22,32,760/-	The assessee has shown excess liability of Rs. 1,29,05,301/-
3.	V&S Cable Pvt. Ltd.	-	Rs. 2,50,000/-	Unserved	Total credit amount of Rs. 2,50,000/- is unconfirmed
4.	Web Com India Pvt. Ltd.	-	Rs. 45,391/-	Balance as per their books of account is 42,137/-	The assessee has shown excess liability of Rs. 3,254/-

6. In so far as item at Sr. No. 1 and 3 above where the notice u/s. 133(6) was not served, the AO made the addition of Rs.6110570/-u/s. 41 of the Act.

7. In so far as item No.2 and 4 are concerned where the parties have confirmed the lesser amount the AO made the addition of Rs.12908555/- u/s. 41 of the Act.

8. Proceeding further the AO found that the assessee has made payment to contractors on which tax has been deducted at source but the same has not been deposited before the due date. Invoking the provisions of section 40a(ia) of the Act the AO made the addition of Rs.8852509/-.

9. Proceeding still further since the assessee could not produce the books of account and vouchers invoking the provisions of section 145 (3) of the Act the AO disallowed 20% of the expenditure totaling to Rs.25401898/- and made the addition of Rs.5080380/-.

10. The additions were challenged before the CIT(A) but without any success.

11. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences duly considered in the light of Rule 18 (6) of the ITAT Rules.

12. The trade payables as per the balance sheet at page-16 of the paper book is as under :-

Ref. No.5 Trade Payables

Sr. No.	Particulars	AS AT 03/2014	AS AT 31.03.2013
1	India Sign Pvt. Ltd.	-	4,915,270.00
2	Rama Devi Software	-	1,223.00
3	V & S Cable Pvt. Ltd.	<u>250000.00</u>	250,000.00
4	Web Com India Pvt. Ltd.	<u>45,391.00</u>	
	Total	295,391.00	5166493.00

13. From the above trade payables it can be seen that there is no amount payable to India Sign Private Limited as on

31.03.2014. The liability outstanding as on 31.03.2013 amounting to Rs.4915270/- has become nil at the end of the year under consideration, therefore, there is no outstanding balance to make addition u/s. 41(1) of the Act.

14. The liability of VNS Cable amounting to Rs.2.50 crores is coming from earlier year and the AO cannot say that the said liability has ceased during the year under consideration and for which benefit has been derived to invoke the provisions of section 41 of the Act. The observations of the Hon'ble High Court of Gujarat in the case of **Dattatray Poultry Breeding Farm P. Ltd 415 ITR 407** is worth mentioning here and the same read as under :-

“16. Section 41(1) of the Act can be applied, provided the following conditions are fulfilled:

- *In the assessment of any assessee, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by him;*
- *any amount is obtained in respect of such loss or expenditure; or any benefit is obtained in respect of such trading liability by way of remission or cessation thereof;*
- *such amount or benefit is obtained by the assessee;*
- *such amount or benefit is obtained in a subsequent year:*

Thus, where a debt due from the assessee is foregone by the creditor in a later year, it can be taxed under section 41(1) of the Act in such later year when it was foregone. Section 41(1) of the Act, therefore, contemplates existence of a debt/liability and the remission or cessation thereof in the year under consideration.

Therefore, for the purpose of taxing any income on account of remission or cessation of liability, the Assessing Officer has to establish that there was an existing liability and that there was remission or cessation of such liability in the previous year relevant to the assessment year in which such income is sought to be taxed.”

15. A similar view was taken by the Hon'ble Punjab and Haryana High Court in the case of **Sita Devi Juneja 325 ITR 593** wherein the Hon'ble High Court held as under :-

“In view of these facts, the CIT(A) as well as the ITAT have rightly come to the conclusion that the Assessing Officer has wrongly invoked the Explanation 1 of section 41(1) of the Act and made the aforesaid addition on the basis of presumption, conjectures and surmises. It has been further found that the Assessing Officer failed to show that in any earlier year, allowance of deduction had been in respect of any trading liability incurred by the assessee. It was also not proved that any benefit was obtained by the assessee concerning such trading liability by way of remission or cessation thereof during the concerned year. Thus, there did not accrue any benefit to the assessee which could be deemed to be the profit or gain of the assessee's business, which would otherwise not be the assessee's income. It has been further found as fact that the assessee had filed the copies of accounts of sundry creditors signed by the concerned creditors, In view of this fact, in our opinion, the ITAT has rightly come to the conclusion that confirmation from the creditors were produced.”

16. Under the schedule trade payables there is no liability outstanding under the name of Axom Communications amounting to Rs.1,51,38,061/-. We have carefully gone through the entire financial statements for the year which are placed at page 13 to 22 of the paper book and we could not find any mention of any liability in the name of Axom Communication where from the AO has picked up this figure is not known since it is not part of the financial statement. We do not find any logic / reason for making the impugned addition. For the liability in the name of Web Com India Private Limited amounting to Rs.45,391/- the bills are placed at pages 23 and 24 of the paper book and the liability pertains to the year under consideration only. For the reasons given here in above, we do not find any merit in this addition u/s.41 of the Act.

17. Considering the facts of the case in totality the addition of Rs.19019125/- is deleted.

18. Ground No.2 and 3 are allowed.

19. Ground No.4 relates to the disallowance made u/s. 40a(ia) of the Act for non deposit of tax deducted at source. It has been argued before us that there is no doubt the tax was deducted at source from the impugned payments but was not deposited on or before the due date of filing of the return but instead of entire

disallowance 30% of the total sum should have been disallowed as per the amended provision of section 40 a(ia) of the Act.

20. The DR strongly stated that the amendment is not applicable for the year under consideration.

21. It is true that the amendment made by the finance No.2 Act 2014 is effective from 01.04.2015 but we are of the considered view that it has retrospective effect as held by the coordinate Bench in the case of **Smt. Kanta Yadav in ITA No. 6312/Del/2016** order dated 12.05.2017. The relevant findings read as under :-

i) ITA No 6312/D/2016 dated 12.5.2017 AY 2012-13 Smt Kanta Yadav vs. ITO

"6. We have considered rival submissions and find that issue is covered in favour of the assessee by order of ITAT Jaipur Bench in the case of Shri Rajendra Yadav vs. ITO (pages 30-41 of JPB) and Smt. Sonu Khandelwal vs. ITO. In these orders it was held that the disallowance u/s 40(a)(ia) to be restricted to 30% of the addition. In these orders the Tribunal has considered the amended provisions of section 40(a)(ia) of I.T. Act. In these orders the assessment year's involve was 2007-08 and 2008-09. In the present appeal the assessment year is 2012-13. Therefore facts are identical. In this view of the matter and following the above decisions of Jaipur Bench, we set aside and modify the orders of the authorities below and direct the Assessing Officer to restrict the addition to 30% of the

total addition made on account of deduction of TDS u/s 40(a)(ia) of the Act".

22. Similarly in **ITA No.1869/M/2014** it has been held as under :-

ii) ITA No 1869/M/2014 dated 24.5.2017 AY 2006-07 M/s Asphalt India Corporation vs. DCIT

"4. We have heard the rival submissions, perused the material before us. We find that the assessee itself had admitted that taxes were paid in the subsequent AY. In the cases of Rajendra Yadav (supra) and Amruta Quarry Works (supra), the Tribunal had held that amendment to section 40(a)(ia) was retrospective in nature, that the amount to be disallowed under the said section had to be restricted to 30% of the impugned expenditure. Respectfully following the above orders of the Tribunal, we hold that disallowance should be restricted to 30%. effective Ground of appeal is decided in favour of the assessee in part. As the appeal for the subsequent A Y is not before us, we are not passing any order in that regard".

23. Again in **ITA No.561/JP/2014** it has been held as under :-

"iii) ITA No 561/JP/2014 dated 23.1.2018 AY 2009-10 M/s ACCME Coke Eng. (P) Ltd vs. JCIT

29. In view of the aforesaid discussion, we do not find any merit in the present appeals filed by the Revenue and they are dismissed." We further note that the Coordinate Bench of this Tribunal in case of Rajesh Yadav in ITA No. 895/JP/2012 vide order dated 29.01.2016 has held as under:-

6.1. Recently in the matter of *P.M.S. Diesels 2015] 59 taxmann.com 100 (Punjab & Haryana)*, Hon'ble Punjab & Haryana High Court had elaborately discussed the judgment passed by the Hon'ble Calcutta High Court and Hon'ble Gujarat High Court, Hon'ble Allahabad High Court and other judgments as available and thereafter has come to the conclusion that the provisions of section 40(a)(ia) are mandatory in nature and non compliance/non deduction of tax attracts disallowance of the entire amount. Having said so, we will be failing in our duty if we do not discuss the amendment brought in by the Finance (No. 2) Act 2014 with effect from 1.4.2015 by virtue of which proviso to section 40(a)(ia) has been inserted, which provides that if any such sum taxed has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of previous year, and further, section 40(a)(ia) has been substituted wherein the 30% of any sum payable to a resident has been substituted. In the present case, the authorities below has added the entire sum of Rs. 7,51,322/- by disallowing the whole of the amount. Though the substitution in section 40 has been made effective with effect from 1.4.2015, in our view the benefit of the amendment should be given to the assessee either by directing the AO to confirm from the contractors, namely, M/s. Garvit Stonex, M/s. Chanda Marbles and M/s. Nidhi Granites as to whether the said parties have deposited the tax or not and further or restrict the addition to 30% of Rs. 7,51,322/-. In our view, it will be tied of justice if the disallowance is only restricted to 30% of Rs. 7,51,322/-. Accordingly, the appeal of the assessee is partly allowed in the above said manner."

Further this Tribunal has taken a similar view on this issue by following the above decisions and therefore even if there is divergent

view taken by the Hon'ble Kerala High Court the view taken in favour of the assessee by this Tribunal by following the various decisions are to be followed to maintain the rule of consistency. Accordingly, We are of the view the second proviso to section 40(a)(ia) of the Act would be effective retrospective as it was undisputedly inserted to remove the hardship faced by the assessee. Hence, we set aside this issue to the record of the Assessing Officer for limited purpose to verify the fact that the interest income received by these NBFCs have been included in the return of income and offered to tax and then decide this issue in light of above observation.”

24. Respectively following the decision of the coordinate Benches (supra) we direct the AO to restrict the disallowance to 30% of Rs.32685382/- . This ground is partly allowed.

25. The last ground relates to the ad-hoc disallowance of 20% of expenditure of Rs.25401898/-.

26. The only reason for making the ad-hoc addition is that “assessee could not produce the books of accounts and vouchers, therefore, the provisions of section 145 (3) are invoked”.

27. We find that while framing the assessment order in para-2 the AO observed as under :-

“Assessee Company is engaged in the business of News Network, I broadcasting & telecasting. The assessee filed a

copy of balance sheet and profit and loss account and other details which were examined during the course of assessment proceedings. The expenses claimed by the assessee were also test checked.”

28. The AO himself mentions that the expenses claimed by the assessee were also test checked and while making the addition the AO says that the books of account vouchers were not produced. The logical question arises if the books and vouchers were not produced then from where the AO test checked the expenses. Further we do not find in the assessment order where the AO asked the assessee to produce books of accounts / vouchers for verification. Once again a logical question arises why 20% and why not 30, 50 even 100%. Without pointing out any specific defect in the audited books of accounts the AO cannot and should not make any estimated addition. We, therefore, direct the AO to delete the impugned addition of Rs.5080380/-.

29. Ground No.4 is allowed.

30. In the result, the appeal of the assessee is partly allowed.

ITA No.1598/Del/2020 (A.Y. 2014-15)

31. The additions made in the assessment and consider by us in ITA No.7489/Del/2017 (supra) were subjected to penalty u/s. 271(1)(c) of the Act.

32. The AO issued three notices u/s. 274 of the Act r.w.s. 271 of the Act which are dated 20.12.2018, 05.03.2019 and 29.03.2019.

Notice dated 29.03.2019 needs special mention as the penalty order itself is dated 29.03.2019 and in the penalty order at para-12 the AO says that penalty has been levied after taking approval of the additional CIT(A)-20, Delhi on 28.03.2019. The other two notices are as under :-

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Office of the
Dy. Commissioner of Income-Tax
Circle-20(1), New Delhi

PAN-AAECP8504F

Dated: 20/12/2016

To,

M/s Priyamda Media & Infotainments Pvt. Ltd
Dd-7, Gulmohar Park,
New Delhi-110019

Whereas in the course of proceedings before me for the assessment year -2014-15 it appears to me that you :-

have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....

have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at 11.30 AM/P.M. on 20/01/2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Assessing Officer
(Signature)
(Shankar Gupta)
Dy. Commissioner of Income-Tax
Circle-20(1), New Delhi

**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE
INCOME TAX ACT, 1961 u/s 271(1)(c) 1441**

PAN: AAIECP8504F

Office of the
Deputy Commissioner of Income tax,
Circle- 20(1), Room No.-219,
C. R. Building, New Delhi
E-mail-delhi.dcit20.1@incometax.gov.in
Ph. No. 011-23370291
Dated: 05.03.2019

To


The Principal Officer
M/s Priyanda Media & Infotainment Pvt. Ltd.,
D-47, Gulmohar Park, New Delhi - 110049

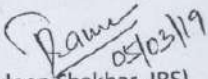
Whereas in the course of proceedings before me for the assessment year 2014-15 it appears to me that you:-

~~* have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income tax Act 1961, dated.....~~

* have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.

You are hereby requested to appear before me at 11.00 A.M on 12.03.2019 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).




 (Pradeep Shekhar, IRS)
 Deputy Commissioner of Income tax,
 Circle-20(1), New Delhi

 (PRADEEP SHEKHAR)
 Deputy Commissioner of Income Tax
 Circle-20(1), Room No. 219,
 C. R. Building, New Delhi-110002

33. From the above notices it is clear the AO has not specified under which limb of the section he is proposing the levy of penalty. This issue is now been well settled by the Hon'ble Jurisdictional High Court of Delhi in the case of Pr. CIT Vs.

Sahara India Life Insurance Company Ltd. ITA 475 of 2019, while deciding the identical issue held as under :-

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar) , the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016.”

34. Similar view was taken by the Hon'ble High Court of Karnataka in the case of **SSA Emerald Meadows ITA No. 380 of 2015**. The relevant findings of the judgment read as under:

“Notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of the Act to be bad in law as it did not specify which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The issue was decided in favour of the assessee.”

35. A SLP of the revenue against this judgment of the Hon'ble High Court of Karnataka was dismissed by the Hon'ble Supreme Court in **73 taxmann.com 248.**

36. We are of the considered view that when the notices issued by the AO are bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

37. Moreover in ITA No.7489/Del/2017 (supra) we have deleted the impugned disallowance, therefore, the basis has been removed and the penalty has no legs to stand on this count also. The AO is directed to delete the impugned penalty.

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI