

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

I.T.A No.625/Del/2018
Assessment Year: 2013-14

NBK Infrastructure P. Ltd., C/o. Kapil Goel, Advocate; F-26/124, Sector : 7, Rohini, Delhi - 110 085.	<u>बनाम</u> Vs.	JCIT, Special Range, Ghaziabad.
PAN : AADCN1927F		
Appellant		Respondent

Assessee by :	Shri Kapil Goel, Advocate;
Revenue by :	Ms. Garima Sharma, Sr. D. R.;

Date of hearing :	07/06/2022
Pronouncement on :	07/06/2022

ORDER

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Ghaziabad [hereinafter referred to CIT (Appeals)] dated 13.11.2017 for assessment year 2013-14 in sustaining the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. The Id. Counsel for the assessee, at the outset, submits that the Assessing Officer while completing the assessment under Section 143(3)

of the Act estimated the net profit at 6.50% on its turnover as against net profit declared by the assessee at 5.89% of the turnover. The Id. Counsel submits that the Assessing Officer estimated net profit by rejecting the books of accounts as there was substantial increase in expenditure and by observing that no wage register, stock register was produced and, therefore, the books of accounts are not complete. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act and imposed penalty of Rs.4,87,837/- which was sustained by the Id. CIT (Appeals).

3. The Id. Counsel for the assessee placing reliance on the decision of the co-ordinate bench Delhi in the case of *Mayasheel Construction Vs. DCIT* in ITA. No. 7173/Del/2017 dated 21.06.2018 and the decision of the Mumbai Bench in the case of *ACIT Vs. M/s. Colo Color Pvt. Ltd.* in ITA. No. 5390/Mum/2018 dated 31.07.2020 submits that when the income is computed on estimated basis penalty under Section 271(1)(c) of the Act cannot be levied for concealment of income or for furnishing inaccurate particulars of income.

4. The Id. DR strongly supported the orders of the authorities below.

5. Heard rival submissions perused the orders of the authorities below and the case laws relied upon. The Assessing Officer made addition of Rs.15,78,761/- by estimating the net profit at 6.50% as against 5.89% declared by the assessee on its turnover. The Assessing Officer rejected the books of accounts and estimated the net profit and imposed penalty under Section 271(1)(c) of the Act which was sustained by the Id. CIT (Appeals).

6. The Hon'ble Punjab & Haryana High Court in the case of Hari Gopal Singh Vs. CIT 258 ITR 85 held that when the additions are made on estimate basis that by itself does not lead to the conclusion that the assessee either concealed the particulars of his income or furnished inaccurate particulars of such income. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Aero Traders Pvt. Ltd. 322 ITR 316 wherein the Hon'ble High Court affirmed the order of the Tribunal in holding that estimated rate of profit applied on turnover of the assessee does not amount to concealment or furnishing inaccurate particulars.

7. In the case on hand the Assessing Officer has only estimated the net profit by rejecting books of accounts and estimation of net profit at higher percentage than the declared percentage by the assessee and, therefore, it cannot conclusively prove of any concealment of income or furnishing of inaccurate particulars of such income. Thus, respectfully following the above said decisions, we delete the penalty levied under Section 271(1)(c) of the Act.

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

Order pronounced in the open court on : 07/06/2022.

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 07/06/2022.

MEHTA

Copy forwarded to :

1. Appellant;

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	07.06.2022
Date on which the typed draft is placed before the dictating member	07.06.2022
Date on which the typed draft is placed before the other member	07.06.2022
Date on which the approved draft comes to the Sr. PS/ PS	07.06.2022
Date on which the fair order is placed before the dictating member for pronouncement	07.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	07.06.2022
Date on which the final order is uploaded on the website of ITAT	07.06.2022
Date on which the file goes to the Bench Clerk	07.06.2022
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	