

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH, NEW
DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 1746/DEL/2015 [A.Y 2010-11]

Ms. Pallavi Sood
Y - 72, G.F. Hauz Khas
New Delhi

Vs.

The A.C.I.T
Circle - 32(1)
New Delhi

PAN: APUPS 5251 E

[Appellant]

[Respondent]

Assessee by : Shri Satyen Sethi, Adv

Shri A.T. Panda, Adv

Revenue by : Shri Atigu Ahmed, Sr. DR

Date of Hearing : 01.12.2020

Date of Pronouncement : 04.12.2020

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A) - 18, New Delhi dated 26.02.2015 pertaining to A.Y 2010-11.

2. The solitary grievance of the assessee is that the Assessing Officer erred in levying penalty under section 140A(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] .

3. Facts on record show that the assessee filed return of income on 26.09.2010, which was subsequently revised on 27.03.2013. As per the return of income, a sum of Rs. 37,41,574/- has been shown as tax payable under section 140A of the Act. Since the tax was not paid till the date of finalisation of assessment under section 143(3) of the Act, the AO proceeded to levy penalty under section 140A(3) read with section 221(1) of the Act amounting to Rs. 37,41,574/-.

4. The assessee carried the matter before the CIT(A) but without any success.

5. Before us, the ld. counsel for the assessee vehemently stated that the provisions of the Act relating to levy of penalty have been amended by the Direct Tax Laws Amendment Act, 1989. It is the say of the ld. counsel that with this amendment, it has been provided in the Act that any delay in payment of self-assessment tax shall attract

interest and not penalty. Since the A.Y under consideration is 2010-11, no penalty should have been levied by the Assessing Officer.

6. Per contra, the ld. DR supported the findings of the Assessing Officer.

7. We have carefully considered the orders of the authorities below. The relevant paras of the Circular dated 31.10.1989 are as under:

"Para 4.17 : The old provisions of sub-section (3) of the section provided for levy of penalty for non-payment of self-assessment tax, since the rate of mandatory interest for failure to pay the tax has now been increased, it is not necessary to retain this provision any more. The amending Act has accordingly omitted the said sub section (3).

4.18 : In order to vest the power of recovery of tax and interest due under this section on the basis of the return, amending Act 1987, has inserted a new sub section (3) in the section to provide that if any asses-see has not paid self assessment tax and interest in full before filing the return, he shall be deemed to be an asses-see in default in respect of such tax and interest."

Quite clearly, if one is to read the earlier Section 140A(3) of the Act and the amended section w.e.f. 1.4.1989 along-with the explanatory notes to the amendment conjointly, it is clear that the earlier provision prescribing for levy of penalty for default outlined in Sub-section (1) of Section 140A(3) has yielded place to mandatory charging of interest for such default. The Heddle Knowledge Private Ltd. aforesaid legislative intent also gets strength by the fact that simultaneously the legislature prescribed for mandatory charging of interest under section 234B of the Act for default in payment of self-assessment tax w.e.f. 01.04.1989 onwards."

8. Therefore, considered in the aforesaid light, in our view, the fact that the amended section 140(3) with effect from 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Assessing Officer was not justified in levying the impugned penalty by making recourse to section 221 of the Act. We, accordingly, direct the Assessing Officer to delete the penalty imposed under section 140A read with section 221(1) of the Act.

9. In the result, appeal of the assessee in ITA No. 1746/DEL/2015 is allowed.

The order is pronounced in the open court on 04.12.2020.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 04th December, 2020

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Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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