

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No. 6472/Del/2012
Assessment Year: 2002-03**

JHPL Holding (P) Ltd. 229 Okhla Industrial Estate-III, New Delhi. (Appellant)	vs	Asstt. Commissioner of Income Tax Circle 4 (1), New Delhi (Respondent)
----------------------------------------------------------------------------------------	----	----------------------------------------------------------------------------------

Appellant by: Shri Gautam Jain, CA
Respondent by: Shri S.N. Bhatia, DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order of the CIT(A)-VIII, Delhi dated 30.10.2012 in Appeal No. 361/2011-12 for AY 2002-03 by which the CIT(A) upheld and confirmed the penalty imposed by the AO u/s 271(1)(c) of the Income Tax Act 1961 (for short the Act).

2. The sole ground raised by the assessee reads as under:-

2. The AO has wrongly imposed penalty of Rs. 1737000/- u/s 271(1)(c) and confirmed by CIT(A) stating inaccurate particulars were filed, it is factually incorrect.

3. We have heard rival arguments of both the parties and carefully perused the record and other relevant material placed before us. At the outset the Ld.

Counsel for the assessee submitted a copy of the order of Hon'ble High Court of Delhi in ITA No. 1235/2011 vide dated 29.11.2011 in assessee's own appeal pertaining to the quantum proceedings wherein following substantial question of law has been framed and appeal of the assessee has been admitted.

(1) Whether the Income Tax Appellate Tribunal was right in holding that Rs. 48,64,490/- received by the appellant-assessee from M/s. Newell Rubbermaid Inc.

In terms of agreement dated 4.3.2002 is a revenue receipt and not a capital receipt??

4. The Ld. Counsel for the assessee further submitted that in view of decisions of Hon'ble Jurisdictional High Court of Delhi including decision in the case of CIT vs. Liquid Investments Ltd. in ITA No. 240/2009 dated 5.10.2010 that when a question of law has been framed on a particular issue then the issue becomes debatable and no penalty is sustainable in regard to such impugned addition. In this case their Lordship held as under :-

Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the issue of deduction under section 14A of the Act was a debatable issue. We may also note that against the quantum assessment whereunder deduction under section 14A of the Act was prescribed to the assessee, the assessee had preferred an appeal in this Court under section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case. This appeal is accordingly dismissed."

5. The DR fairly accepted that the Hon'ble High Court has admitted appeal of the assessee, filed against the order of the Tribunal, in regard to quantum proceedings and a question of law as reproduced hereinabove, has been framed therein. The DR also submitted that the quantum and penalty proceedings are independent and separate and the revenue authorities are empowered to evaluate each proceedings on its own footings. The DR supported the orders of the authorities below.

6. From the above submissions and contentions of both the parties at the outset we observed that , admittedly the impugned addition pertaining to the amount received by the assessee from M/s. Newell Rubbermaid Inc. has been upheld by the Tribunal. At the same time we also observed that in assessee's appeal ITA No. 1235/2011 order vide dated 29.11.2011 (supra) the Hon'ble High Court of Delhi has admitted appeal of the assessee and a substantial question of law has been framed therein. In view of various decisions of Hon'ble Jurisdictional High Court including decision in the case of Liquid Investment Ltd. (supra) we reach to a logical conclusion that when appeal of the assessee has been admitted in the Hon'ble High Court and substantial question of law has been framed then the issue becomes debatable and in this situation no penalty u/s 271(1)© of the Act is not leviable on the assessee.

7. Respectfully following the above decisions of Hon'ble Jurisdictional High Court of Delhi in the case of Liquid Investment Ltd. (supra) and other relevant decisions we are inclined to hold that the penalty was imposed on the assessee pertaining to the issue on which a substantial

question of law has been framed by Hon'ble High Court and the same has become debatable then no penalty is leviable thereon. Accordingly, we hold that the AO was not justified in imposing penalty and the CIT(A) confirmed the same without any basis and justified ground which is not sustainable in view of foregoing discussions. Resultantly, the sole ground of assessee is allowed.

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

9. The order was pronounced on conclusion of the hearing on 4th July, 2014.

sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated 4th July, 2014

*Veena"

Copy of order forwarded to:

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

By Order
Asstt Registrar, ITAT