



आयकर अपीलीय अधिकरण 'बी' न्यायपीठ, लखनऊ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

श्री कुल भारत, उपाध्यक्ष एवं श्री निखिल चौधरी, लेखा सदस्य के समक्ष
**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 803/LKW/2024
Assessment Year: 2005-06

Agmotex Fabrics Ltd 3/239 Vishnupuri, Kanpur- 208002.	v.	The Dy. Commissioner of Income Tax, Range-6 Aayakar Bhawan, 16/69, Civil Lines, Kanpur- 208001.
PAN:AABCA6099H		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Shri R. R. N. Shukla, Addl. CIT (DR)		
Date of hearing:	23	02	2026
Date of pronouncement:	15	04	2026

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 25.11.2024 pertaining to the assessment year 2005-06. The assessee has raised the following grounds of appeal: -

"01. Because the CIT (A) has erred on facts and in law in upholding the levy of penalty of Rs.1,26,065/- under section 271(1)(c), which penalty is contrary to facts, bad in law be deleted.

02. Because on a proper consideration of the facts and circumstances of the case, the income of the assessee company being assessed as per section 115JB on the Book Profit and not as per the general computation of income, there being no tax liability on the same, the provisions of section 271(1)(c) are not applicable, the penalty imposed is bad in law be deleted.

03. Because the CIT(A) has failed to appreciate that the assessment has been framed as per the provisions of section 115JB and not as per the general provisions of the Act, there being no tax payable, the

provisions of section 271(1)(c) are not applicable, the penalty imposed is bad in law be deleted.

04. Because without being prejudice to the above, the variation to the income so determined as per the general provisions also, is all based on account of disallowances made and not on account of any concealment of the1 particulars of the income or furnishing of inaccurate particulars of the income, as such, the provisions of section 271(1)(c) being not applicable, the authorities below have erred in imposing the penalty of Rs.1,26,065/-, which penalty being bad in law be deleted.

05. Because there being no specific charge as mandated u/s 271(1)(c) of the Act, 1961 for levy of penalty both at the time of framing the assessment and also at the time of issue of penalty notice, the penalty imposed is bad in law and be deleted.”

2. The facts giving rise to the present appeal are that in this case, the assessee filed its return of income at Nil for the A.Y. 2005-06. The return was processed u/s 143(1) of the Income Tax Act, 1961 (“Act”, for short). Thereafter, the case was taken up for scrutiny assessment and the assessment was framed at nil on the basis that the income as determined u/s 115JB of the Act was more than the tax on the income worked out under the normal provisions of the Income Tax Act. However, the Assessing Officer (“AO”, for short) separately initiated penalty proceedings u/s 271(1)(c) of the Act. Thereafter, the penalty u/s 271(1)(c) of the Act was imposed amounting to Rs.1,26,065/- vide order dated 15.03.2019. Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A) who also sustained the penalty. Now, the assessee is in appeal before this Tribunal.

3. Apropos the grounds of appeal, the Ld. Counsel for the assessee contended that the income of the assessee has been determined u/s 115JB of the Act; therefore, there is no loss of Revenue. The Ld. Counsel has placed reliance on the decision of the Co-ordinate Bench of this Tribunal rendered in the case of *DCIT vs. Havells India Ltd.* in ITA No. 1247/Del/2022, vide order dated 16.04.2025. Further reliance has been placed on the decision of the Co-ordinate Bench in the case of *ITO vs. Software*

Element India Pvt. Ltd. in ITA No. 551/Mum/2012, vide order dated 24.01.2013. Further, reliance has been placed on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Nalwa Sons Investments Ltd.* [327 ITR 543 (Del); (2010) 194 Taxman 387 (Del); (2010) 235 CTR 209 (Del)].

4. On the other hand, the Ld. Departmental Representative (DR) opposed the submissions and supported the orders of the lower authorities.

5. We have heard the rival contention and perused the material available on records. There is no dispute with regard to the fact that the income of the assessee computed under the provisions of Section 115JB of the Act at nil by the AO. The Hon'ble Delhi High Court in the case of *CIT vs Nalwa Sons Investments Ltd (supra)*, after considering the rival submissions held as under: -

"1. The question, however, in the present case, would be, as to whether furnishing of such wrong particulars had any the effect on the amount of tax sought to be evaded. Under the scheme of the Act, the total income of the assessee is first computed under the normal provisions of the Act and tax payable on such total income is compared with the prescribed percentage of the „book profits“ computed under section 115JB of the Act. The higher of the two amounts is regarded as total income and tax is payable with reference to such total income. If the tax payable under the normal provisions is higher, such amount is the total income of the assessee, otherwise, „book profits“ are deemed as the total income of the appellant in terms of Section 115JB of the Act.

22. In the present case, the income computed as per the normal procedure was less than the income determined by legal fiction namely „book profits“ under Section 115 JB of the Act. On the basis of normal provision, the income was assessed in the negative i.e. at a loss of Rs. 369521018. On the other hand, assessment under Section 115 JB of the Act resulted in calculation of profits at Rs. 40163180.

23. In view thereof, in conclusion, the assessment order records as follows:-

"Assessed at Rs. 40163180 u/s 115 JB, being higher of two. Interest u/s 234B and 234C has been charged as per the provisions of Income Tax Act, 1961. Penalty proceedings u/s 271 (1) © of the Income Tax Act, 1961 have been initiated. Issue necessary forms."

24. *The income of the assessee was thus assessed under Section 115 JB and not under the normal provisions. It is in this context that we have to see and examine the application of Explanation 4.*

25. *Judgment in the case of Gold Coins (supra), obviously, does not deal with such a situation. What is held by the Supreme Court in that case is that even if in the income tax return filed by the assessee losses are shown, penalty can still be imposed in a case where on setting off the concealed income against any loss incurred by the assessee under other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even a minus figure. The court was of the opinion that „the tax sought to be evaded“ will mean the tax chargeable not as if it were the total income. Once, we apply this rationale to Explanation 4 given by the Supreme Court, in the present case, it will be difficult to sustain the penalty proceedings. Reason is simple. No doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under Section 115 JB of the Act which has become the basis of assessment as it was higher of the two. Tax is thus paid on the income assessed under Section 115 JB of the Act. Hence, when the computation was made under Section 115 JB of the Act, the aforesaid concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all.*

26. *The upshot of the aforesaid discussion would be to sustain the order of the Tribunal, though on different grounds. Therefore, while we do not agree with the reasoning and approach of the Tribunal, for our reasons disclosed above, we are of the opinion that penalty could not have been imposed even in respect of claim of depreciation made by the assessee. This appeal is accordingly dismissed.”*

6. This judgment has been followed by the co-ordinate Bench in the case of ITO vs Software Element India Pvt Ltd (supra), where the Co-ordinate Bench has held as under: -

“7. *We have heard both parties and their contentions have carefully been considered. We have gone through assessment order and it is seen that tax has been charged by the revenue on the basis of computation made under section 115JB of the Act which is exactly same as submitted by the assessee. There was no addition whatsoever with reference to assessment under section 115JB of the Act. The normal assessment is nil subject to carry forward of certain losses which have not been fully set off. Both the computations have been reproduced in the above part of this order. Therefore, the ratio laid down in the aforesaid decision of Hon’ble Delhi High Court in the case of CIT vs. Nalwa Sons Investment (supra) will be squarely applicable. SLP filed against the said decision has also been dismissed. In this view of the situation we see no infirmity in cancellation of the penalty though for the reasons different from reasons given by Ld. CIT(A). Therefore, appeal is dismissed.”*

7. The Ld. Departmental Representative could not bring to our notice any contrary binding precedent. We, therefore, respectfully following the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Nalwa Sons Investments Ltd.* (supra) and the decision of the Co-ordinate Bench in the case of *ITO vs. Software Element India Pvt. Ltd.* (supra), hereby direct the AO to delete the impugned penalty. Grounds raised in this appeal are allowed.

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

Order pronounced in the open Court on 15/04/2026.

Sd/-

[निखिल चौधरी]

[NIKHIL CHOUDHARY]

लेखा सदस्य/ACCOUNTANT MEMBER

DATED: 15/04/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

Sd/-

[कुल भारत]

[KUL BHARAT]

उपाध्यक्ष/VICE PRESIDENT

By order

