

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" B" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 2247/AHD/2018

निर्धारणवर्ष/Asstt. Year: 2011-2012

D.C.I.T., Circle-2(1)(1), Ahmedabad.	Vs.	Intas Pharma Ltd., 203, Chinubhai Centre, Nr. Neharu Bridge Ashram Road, Ahmedabad. PAN: AABC10331E
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(Applicant)	(Respondent)
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Revenue by :	Shri Kishan Vyas, C.I.T. D.R
Assesseeby :	Shri Biren Shah, A.R

सुनवाईकीतारीख/**Date of Hearing** : **13/01/2021**
घोषणाकीतारीख/**Date of Pronouncement**: **02/03/2021**

आदेश/O R D E R

PER MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal has been filed by the Revenue against the order dated 09.08.2018 passed by the Learned Commissioner of Income Tax(Appeals)-2, Ahmedabad, arising out of the penalty order dated 01.03.2017 passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year 2011-2012.

2. The brief facts leading to this case is this that the assessee filed its return of income declaring total loss of Rs(-)70,28,90,258/- which was finalized under scrutiny assessment u/s.143(3) of the Act dated 28.03.2014 determining total

loss at Rs.(-) 18,75,000/- whereby and whereunder additional depreciation claim of Rs.18,47,95,000/- was disallowed. A penalty proceeding u/s.272(1)(c) of the Act was also initiated against the assessee for furnishing of inaccurate particulars of income by issuing notice u/s. 274 r.w.s 271(1)(c) of the Act on 28.03.2014 which was culminated into the order imposing minimum penalty of Rs.6,13,84,278/- on 01.03.2017. Ultimately, the same was deleted by the Ld. CIT (A). Hence, the instant appeal before us.

3. The Ld. D.R relied upon the order passed by the Ld.AO in support of the order of levying penalty.

4. On the other hand, the case of the assessee is this that the penalty proceeding initiated on the charge of furnishing of inaccurate particulars of income but the penalty was ultimately levied on the charge of concealment of income and therefore the order of penalty is liable to be quashed. Further that, the penalty has been levied on the basis of the fact of disallowance of additional depreciation of Rs.1,81,47,95,000/- without appreciating the fact that penalty proceeding are different from the assessment proceeding. It was further case as urged by the Ld. A.R before us, on behalf of the assessee is this that the Ld.AO ought to have appreciated that mere rejection of claim of appellant-company does not result in conscious concealment of particulars of income or furnishing of inaccurate particulars of income.

The Ld A.R relied upon the order passed by the Ld.CIT (A) holding that merely disallowance of claim does not attract penalty u/s.271(1)(c) of the Act.

5. Heard the Ld. Counsel appearing for the parties and perused the relevant material available on record. It appears from the records that the Assessing Officer while levying the penalty has made the following relevant observations.

“6. Moreover, on this issue, elaborate discussion and reasoning has already been narrated by the Assessing Officer in the Assessment Order, discussed in para 3, 4, 5 and 6 of the assessment order dated 28/03/2014.

7. The Hon'ble Supreme Court, in the case of *Union of India vs. Dharmendra Textile Processors* (2008) 166 Taxman 65 (SC), has held that penalty under section 271(1)(c) is civil liability and for attracting such civil liability, willful concealment is not an essential ingredient as is in the matter of prosecution under section 276C. As brought out in the assessment order, it is very clear that the assessee has furnished inaccurate particulars of income. Explanations added to Section 271(1)(c) in their entirety also indicate element of strict liability of assessee for concealment or for giving inaccurate particulars while filing returns – *Union of India v. Dharamendra Textile Processors* (2007) 295 ITR 244 (SC).

8. As per the deeming provisions of Explanation 1 to section 271(1), the amount of addition on any issue about which the assessee is unable to offer any satisfactory explanation shall be deemed to represent the income in respect of which particulars have been concealed. In this case, as brought out in the assessment order, the assessee failed to offer any satisfactory explanation. Moreover, in the case of *Union of India vs. Dharamendra Textile Processors* [2008] 166 Taxman 65 (SC), the Hon'ble Supreme Court has held that penalty under section 271(1)(c) is civil liability and for attracting such civil liability, willful concealment is not an essential ingredient as is the case in the matter of prosecution under section 276C.

9. In view of above discussion, I am, satisfied that this is a fit case for levy of penalty u/s. 271(1)(c) of the I.T. Act in respect of concealing the income of Rs. 18,47,95,000/-. Since the returned income and assessed income was loss, the penalty is calculated as per explanation 4 (a) section 271 the Income Tax Act. The tax sought to be evaded on such income comes to Rs. 6,13,84,278/-. The minimum and maximum penalty levied u/s. 271(1)(c) works out to Rs. 6,13,84,278/- and Rs. 18,41,52,834/- respectively.

10. Considering the facts of the case, I impose penalty of Rs. 6,13,84,278/- as against the maximum penalty imposable of Rs. 18,41,52,834/- u/s. 271(1)(c).”

6. It further appears that the appellant has claimed the additional depreciation of Rs.18,47,95,000/- on plant and machinery u/s.32(1)(ia) of the Act, which has been disallowed by the Ld. A.O. on the ground that appellant has started production only in the current year and therefore the assessee cannot be said to have been already engaged in the business of manufacturing. It is also a fact that the Ld. A.O. has initiated the penalty for furnishing of inaccurate particulars of income but ultimately levied penalty for concealment of income. Apart from that in our considered opinion since this is a case of disallowance of claim of depreciation there cannot be any question of concealment of income. Further that, the appellant has made claim of additional depreciation on the basis of the Tax Audit Report. In this regard we have carefully considered the

judgment passed by the Jurisdiction High Court in the case of Geeta Prints Pvt. Ltd.[2013] 33 Taxmann.com 393(Guj.) as relied upon by the Ld. A.R. It was decided therein that when the assessee had made full disclosure about its claim u/s.80HHC supported by the certified issued by Chartered Accountant no penalty can be levied u/s.271(1)(c)of the Act, merely on the ground that the claim on merit was not granted. The relevant portion of that particular judgment reads as under:

“..5. *With respect to penalty on the alleged consumption of quota of coal, we had in a separate appeal of the assessee deleted the penalty making following observation .*

"Having thus heard the learned counsel for the parties, insofar as the penalty relatable to the quota of coal used from GMDC is concerned, though it is true that the quantum additions have become final and the Tribunal's judgment was not further carried in appeal, however, that must be viewed in the background of the assessee's submission that the amount itself was not very substantial and the assessee's financial condition was weak. We also notice that though on facts and on somewhat similar background when another assessee, viz. Krishna Textile approached this Court, theory that such assessee had not lifted any coal from GMDC, but was siphoned off through fraud was noticed by this Court in that case was also accepted.

Additionally, we find that in the subsequent year, the AO himself having verified the details appeared to have come to the conclusion that though there was record showing consumption of coal by the assessee from GMDC, the bank record suggested otherwise. In totality of the facts and circumstances of the case, we are of the opinion that penalty on this head should be deleted."

6. *With respect to second head of addition relating to penalty, counsel submitted that the CIT(A) had given cogent reasons for deleting the penalty. It was noticed that the assessee had made full disclosures and the statutory report was also suggesting that the claim was legal. He further pointed out that the Kerala High Court in the case of CIT v. K. Rajendranathan Nair [2004] 265 ITR 35/135 Taxman 360 held that such claim was sustainable under s. 80HHC of the Act. He, therefore, submitted that the Tribunal committed an error in reversing the order of CIT (A).*
7. *On the other hand, counsel for the Revenue opposed the contention submitting that the assessee had made exaggerated and false claim, that the Tribunal has correctly reversed the order of CIT(A).*
8. *Having thus heard the counsel for the parties and having perused the record, it emerges that the assessee had made full disclosure about the claim. The claim was also certified by the chartered accountant. Necessary declarations in the prescribed forms were made, may be in the case of the assessee, such claim on merits was not granted. However, this does not mean that the assessee had concealed any income. Further, we find that the issue ultimately at any rate is*

debatable since one High Court has already held in favour of the assessee. We also find that in the case of CIT v. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158/189 Taxman 322(SC), the apex Court observed that when no information as given in return is found to be incorrect, penalty could not be imposed. It was held that making incorrect claim does not amount to concealment of particulars.

9. *In the result, we find that the Tribunal erred in interfering with the order of the CIT(A). Question No. 1 is answered in favour of the assessee. In that view of the matter, it is not necessary to answer question No. 2. Tax appeal is allowed accordingly. Judgment of the Tribunal is set aside. Appeal is disposed of..”*

7. It appears from the records that while considering the appeal preferred by the assessee the Ld.CIT (A) took into consideration the ratio laid down by this Hon’ble Court in the mater above. Apart from that the judgment passed by the Coordinate Bench in the case of Cera Sanitary Ware Ltd. has also been taken into consideration relevant portion whereof reads as under:

“...13. From going through the above judgment of Hon. Apex Court and analyzing the facts of the case in the appeal before us, we find that it is squarely covered in favour of assessee by the above judgment as the assessee which is a limited company declaring total income of Rs.11.43 crores (approx.) and having no mens rea of claiming excess depreciation of just Rs.7,80,826/- rather it was claimed in the regular course and with the firm belief that it is legally allowable which was further supported by the statutory audit report. It was only the Revenue’s contention that the depreciation cannot be allowed on the show room building as it could not be deemed to be put to use on 5.3.2007 as claimed by the assessee but was put to use on 31.5.2007 after the completion of Bath Studio. Certainly in such circumstances it will be unjustified to impose penalty u/s 271(1)(c) of the Act as the assessee had only committed an undoubtful bona fide error and it certainly had no intention of Assi Year 2007-08 concealing any income or furnishing inaccurate particulars of income. We are, therefore, of the view that assessee should not be visited with penalty u/s.271(1)(c) of the Act on the disallowance of depreciation of Rs.7,80,826/-. We accordingly set aside the order of Ld.CIT(A) and allow the assessee’s appeal...”

8. Thus, while deciding the matter in favour of the assessee the Ld. Tribunal has been pleased to observe that the limited company declaring total income of Rs.11.43 Crores approx. and having no mens rea of claiming excess depreciation of just Rs.7,80,826/-, rather it was claimed in regular course with the firm belief that it is legally allowable which was further supported by statutory Audit Report and therefore, imposition of penalty is unjustified.

The A.O. decided the matter against the assessee on the contention that depreciation can be allowed on the show room building as it could not be deemed to be put to use on 05.03.2007 as claimed by the assessee but was put to use on 31.05.2007 after the completion of Bath Studio. On that premises the penalty imposed u/s.271(1)(c) of the Act was declared to be unjustified as the assessee has only committed an undoubtful bona fide error without having any intention of concealment of income or furnishing inaccurate particulars of income.

Thus relying on the same ratio when there was full disclosure of the claim made by the assessee in the case in hand certified by the Chartered Accountant penalty is not justified merely on the ground of rejection of claim on merit and, thus, quashing of penalty by the Ld.CIT (A), in our considered opinion, is just and proper so as to warrant inference. The appeal preferred by the Revenue is, thus, found to be devoid of any merit and accordingly dismissed.

9. In the result, the appeal filed by the Revenue is **dismissed**.

Order pronounced in the Court on 02/03/2021 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 02/03/2021
Manish/Tanmay

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

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आदेशकीप्रतिलिपियेपित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad