

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SH. LALIT KUMAR, JUDICIAL MEMBER**

**ITA No. 5838/Del/2013
AY: 2006-07**

Promain Ltd.	vs.	ACIT, Circle 14(1)
7 th floor, Kanchenjunga bldg.		New Delhi
18, Barakhamba road		
New Delhi 110 001		

PAN: AAACP 3056 G

(Appellant)

(Respondent)

Appellant by : Sh. T.R.Talwar, Adv.

Respondent by : Sh. R.C.Danjay, Sr.D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals)-XVII, New Delhi dated 02.8.2013 for the Assessment Year 2006-07, on the following grounds.

'On the facts and circumstances of the case, the Ld.CIT(A) erred:

- 1. In sustaining the penalty of Rs.3,56,166/- imposed by the AO u/s 271(1)(c) of the Income Tax Act 1961 (the Act) after disallowing the expenditure claimed by the assessee in its normal course of business.*

2. *In sustaining the said penalty ignoring the settled law that the disallowance of expenditure claimed per se does not by itself leads to the inference that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income.*
3. *In sustaining the said penalty ignoring that the assessee is in the business of investment and trading company and in order to maintain its status of a company various expenses are required to be incurred in its normal course of business, even when there is lull in the business.”*

2. Facts in brief:- The assessee is a company which filed its return of income on 3.11.2006 declaring total income of Rs.44,68,480/-. The assessment was completed u/s 143(3) on 7.11.2008 computing the total income at Rs.55,34,995/-. The Assessing Officer (AO) disallowed business loss of Rs.10,66,545/-. The AO was of the view that the expenditure claimed by the assessee was not allowable, for the reason that there was no income or probable source of income against which the expenditure can be claimed. The assessee was directed to apportion the expenses under various heads of income. The assessee replied that no such apportionment can be made, as the expenditure was incurred under the head 'income from business'. The A.O. rejected this explanation. On appeal, the First Appellate Authority broadly upheld the finding of the A.O. He granted relief to the assessee on audit fee paid. Thereafter, the A.O. levied penalty u/s 271(1)(c) of the Income Tax Act, 1961 (the Act). Aggrieved the assessee carried the matter in appeal. The First Appellate Authority confirmed the

levy of penalty u/s 271(1)(c) of the Act. Aggrieved the assessee is before us.

3. After considering rival submissions we hold as follows.

4. The genuineness of the expenditure incurred is not disputed by the Revenue. The only dispute is whether, the expenditure incurred by the assessee to the tune of Rs.10,66,545/- is to be allowed under the head of 'income from business or profession' or to be apportioned between various heads of income earned by the assessee. The assessee has income from rent, interest, dividend, long term capital gain and short term capital gain. When the assessee has income from dividend, interest and capital gain, to say that the assessee has not done any business during the year, in our view, is not correct. Be it as it may, there is no furnishing of inaccurate particulars of income or concealment of income in this case. The issue whether the expenditure of Rs.10,66,545/- is to be allowed under the head 'income from business' or whether it has to be apportioned between different heads of income is a debatable issue. Thus applying the propositions laid down by the Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products Ltd. in 321 ITR 115 (S.C.), we have to cancel the penalty levied against S.271(1)(c) of the Act in this case.

5. Even otherwise a perusal of notice u/s 274 r.w.s. 271 of the Act dt. 7.11.2008 issued by the A.O. to the assessee does not specify the charge. In the notice none of the alternative charges are struck off. From the notice it is not clear whether penalty is

proposed to be levied for failure to comply with the notice u/s 143(1)/143(2) of the Act or for concealment of particulars of income or furnishing of inaccurate particulars of income.

6. The Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton Ginning Factory, 359 ITR 565, wherein the Hon'ble High Court considered the entire case law on the subject of levy of penalty u/s 271(1)(c) of the Act and summarized the law as follows.

“Merely because the assessee agreed for addition does not lead to the inference that the said addition is on account of concealment if the assessee has offered an explanation which is not found to be false. The mere fact that the assessee agreed to pay tax and did not challenge the assessment order does not mean that his conduct is mala fide. The following principles apply:

(a) Penalty under Section 271(1)(c) is a civil liability.

(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.

(c) Wilful concealment is not an essential ingredient for attracting civil liability.

(d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.

(e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.

(f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 11(A) and (B) it should be discernible from the said order

which would by a legal fiction constitute concealment because of deeming provision.

(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1 (B).

(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

(i) The imposition of penalty is not automatic.

(j) Imposition of penalty even if the tax liability is admitted is not automatic.

(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not 'bonafide, an order imposing penalty could be passed.

(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

(n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

(p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income.

(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

(u) The findings recorded in the assessment proceedings insofar as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of

penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings.”

6.1. Similarly the ITAT, Mumbai Bench in the case of Shri Hafeez S.Contractor vs. ACIT (in ITA nos. 6222 and 6223/2013 held that the penalty u/s 271(1)(c) cannot be imposed in case where no specific charges are mentioned in the penalty notice.

7. By applying the propositions laid down in the above cited cases, we delete the penalty levied u/s 271(1)(c) of the Act and allow the grounds of the assessee.

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

Order pronounced in the Open Court on 25th April, 2016.

Sd/-
(LALIT KUMAR)
JUDICIAL MEMBER

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 25th April, 2016

- *Manga*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR