

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।
BEFORE SHRI AMIT SHUKLA, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.872/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2007-08)

Income Tax Officer 1(2)(2), Room No.527, 5 th floor, Ayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s Kesar Petroproducts Ltd, D-7/1, MIDC Industrial Area, Lote Parshuram, Tal Khed, Dist Ratnagiri, Mahbarashtra.-415722
स्थायी लेखा सं./ PAN :		AAACK2056M
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by :	Shri M C Omi Ningshen
प्रत्यर्थी की ओर से/ Respondent by :	Shri K P Kapadia

सुनवाई की तारीख / **Date of Hearing** : **14.12.2016**

घोषणा की तारीख / **Date of Pronouncement** : **31.1.2017**

आदेश / ORDER

PER RAJESH KUMAR, AM :

This appeal filed by the revenue is directed against order passed by Ld. CIT(A)-2, Mumbai dated 19.11.2014 for assessment year 2007-08.

2. The common issue raised in all the grounds of appeal by the Revenue is against the deletion of the penalty of Rs.1,92,07,921/- by the Id.CIT(A) as levied by the AO under section 271(1)(c) of the Act.

3. The facts of the case are that the assessee filed its return of income on 25.10.2007 declaring nil income. The assessee was declared as sick industrial undertaking on 23.09.2005 and a scheme of rehabilitation was

approved on 17.8.2007 by BIFR. Pursuant to the said scheme the old directors resigned and new were inducted on the Board of the assessee. The records of the assessee were with the old management who was not cooperating with the new management of the assessee and as a result the books of accounts and records could not be produced before the AO in the assessment proceedings. The AO during the assessment proceedings on the basis of information available in the annual audited accounts of the assessee came to the conclusion that the assessee discontinued its manufacturing and production since November 2004 and declared nil receipts/sales in the profit and loss account. The AO finally framed the assessment u/s 143(3) of the Act on 24.12.2009 assessing the total income at Rs.23,99,342/- by disallowing all the expenses and making additions on account of house property of Rs.6,68,000/-, depreciation of Rs.2,67,93,247/-, Manufacturing expenses of Rs.46,31,654/-, Interest & Financial charges of Rs.2,27,20,949/- and written off deferred revenue expenses of Rs.3,18,938/ - and also treating the Interest on I.T.refund of Rs.14,38,549/- and the bank interest Rs.13,753/- as income from other sources as against the business shown by the assessee when the assessee failed to produce the books of account and supporting records before the AO by citing its inability as the records were in the possession of old management which not cooperative in the matter of handing the records to the new management. The AO also initiated penalty proceedings

u/s.271(1)(c) of the Act,1961 for furnishing inaccurate particulars of income and concealment of income. The FAA dismissed the quantum appeal of the assessee and no further appeal was filed before the tribunal. Thereafter, the AO issued show cause notice to the assessee as to why the penalty should not be imposed for the various additions as made in the assessment order stating the reasons that the assessment order was also confirmed and affirmed by the Id.CIT(A). The assessee again failed to respond to the said show cause notice and finally the AO proceeded to impose penalty on the basis of material available on record after giving detailed observations on page 2 and 3 of the penalty order passed under section 271(1)(c) of the Act of Rs.1,92,07,921/- being 100% of the tax sought to be evaded by assuming that the assessee has nothing to say or submit in the matter.

4. The aggrieved assessee carried the matter before the Id.CIT(A) who deleted the penalty after taking into account the contentions of the assessee by observing and holding as under :

3.2. The facts of the case, the stand taken by the A.O. in the assessment order and the contentions raised by the learned authorized representative of the appellant company during the appellate proceedings as well as the written submissions made are considered. On a perusal of the penalty order, it is seen that the AO has merely relied upon the order of the CIT(A), although the appeal was dismissed on technical grounds. Penalty proceedings are separate proceedings, which provide the requisite opportunity and authority for the AO to investigate into the issues on which additions were made. During the penalty proceedings, the AO is empowered to bring on record any materials which support the view that the

appellant had concealed the income or furnished inaccurate particulars of income. It is seen from the penalty order that the AO has not brought on record any such materials which indicate that the appellant had furnished inaccurate particulars of income.

3.3. On the other hand, during the appeal hearing proceedings, the Ld. AR of the appellant has contended that the expenses and deductions claimed are based on the audited accounts of the appellant company. The AO has rejected the claims on account of a difference of opinion but not established that the appellant has furnished inaccurate particulars of income. I find that there is a merit in the contentions of the appellant. All the disallowances and adjustments to the returned income have been made on account of the fact that the AO has held a view, which is different from that of the appellant. Although the disallowances have been confirmed in the quantum appellate order of even date, the same is not an adequate justification for imposing or confirming the concealment penalty. Clearly disallowances made are of debatable nature and therefore the said disallowances do not justify the levy of concealment penalty. As observed merely on account of making a debatable claim does not automatically result in levy of concealment penalty. The decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. Vs CIT (322 ITR 158) is applicable to the facts of the case of the appellant. The gist of the decision is as under:

"A glance at the provisions of section 271 (1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the

return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271 (1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. "

3.4. Respectfully following the decision of the Apex Court (supra), the penalty levied u/s. 271 (1)(c) of the Act is hereby deleted.

4. In the result, the appeal is allowed."

5. The Id. DR while relying heavily on the order of AO submitted that the AO has rightly imposed penalty for concealment of income and furnishing inaccurate particulars of income as the assessment order as framed u/s 143(3) of the Act stands confirmed by FAA. The Id DR submitted that the Id.CIT(A) has deleted the penalty imposed without taking into consideration the facts of the case by simply following the decision of the Hon'ble Apex Court rendered in the case of Reliance Petro products Pvt. Ltd. (supra). The Id DR also argued that the filing inaccurate particulars was proved beyond doubt when the FAA sustained the order of assessment passed by the AO. The Id. DR finally prayed that the order of the Id.CIT(A) be set aside and that of AO be confirmed.

6. On the other hand, the Id.AR submitted before us that the all the items of expenses and income as were disallowed in the assessment order

were fully disclosed by the assessee in its annual accounts filed along with the return of income filed by the assessee and thus all the details regarding additions were available before the AO. Simply because the assessee did not challenge the appellate order of FAA confirming the various additions in assessment order should not be taken to mean that the assessee has concealed particulars of income or furnished inaccurate particulars of income. The Id. CIT(A) after considering and examining every aspect of the matter and by following the decision rendered by the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) deleted the penalty levied by the AO. The Id.AR therefore, prayed that the order of the Id.CIT(A) should be upheld.

7. We have heard both the parties and perused the relevant material placed before us. The assessee was a sick company and under a scheme of revival the by the BIFR, the management and shareholding pattern changed hands following which old directors resigned and new directors were inducted on the board of directors of the assessee. The details, information and books of accounts required by the AO in the assessment proceedings could not be produced as the same were stated to be in the possession and control of old management who was not cooperating in handing over the records of the company to the new management. Ultimately the AO has to complete the assessment on the basis

information available on the records. The AO noted that that the assessee discontinued its business in 2004 whereas the assessee has claimed before the AO that the business was suspended and not discontinued. In consequence, in the assessment so framed all the expenses claimed in the profit and loss account of the assessee were disallowed and the interest income was treated as income from other sources instead of Business income. The quantum appeal by the assessee before the FAA was dismissed and thereafter no further appeal was filed before the tribunal and the thus assessment so framed attained finality. We also note that all the additions were made by the AO on the basis of audited annual accounts filed by the assessee with the return of income by disallowing all the expenses charged to the profit and loss account. After dismissal of quantum appeal by the FAA, the AO mechanically levied penalty without recording any findings that as to how the assessee has concealed the income or filed in accurate particulars of income. Mere making a claim of expenses in the profit and loss account in a case where the accounts of the assessee were audited and also accounts were prepared under professional guidance and advice would not automatically lead to inference that assessee is liable to the penal action u.s 271(1)© of the Act. A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Therefore, in our opinion the Id.CIT(A) has rightly deleted the

penalty imposed by the AO after taking into account the contentions put forth by the assessee vis-a-vis the provisions of the Act by relying on the ratio in the decision of the Reliance Petroproducts Pvt Ltd(supra). In view of the facts as discussed hereinabove and ratio laid down in the decision of apex court in the case of Reliance Petro products Pvt Ltd we are inclined to uphold the order of FAA by dismissing the appeal of the revenue.

8. In the result the appeal of the revenue stands dismissed.

Order pronounced in the open court on 31st Jan, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: Jan,2017 को की गई ।

Sd
(AMIT SHUKLA)
न्यायिक सदस्य / JUDICIAL MEMBER

sd
(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31/01/2017

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**