

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-1755/DEL/2012
(ASSESSMENT YEAR-2003-04)**

Menlo Worldwide Forwarding India Pvt. Ltd. D-12/1, Okhla Industrial Estate Phase-II New Delhi AAACE2236R (APPELLANT)	vs	DCIT Circle-6(1) New Delhi (RESPONDENT)
---	----	---

**I.T.A .No.-3052/DEL/2011
(ASSESSMENT YEAR-2003-04)**

DCIT Circle-6(1), Room No. 413, C.R. Building New Delhi (APPELLANT)	vs	Menlo Worldwide Forwarding India Pvt. Ltd. R-77-A, Greater Kailash, Part-1 New Delhi AAACE2236R (RESPONDENT)
--	----	--

Appellant by	Sh. S.K. Aggarwal, CA. Ms. Meha Chauhan, CA
Respondent by	Sh. Amrit Lal, SR. DR

Date of Hearing	01.02.2016
Date of Pronouncement	16.02.2016

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals being ITA No. 3052/Del/2011 filed by the Revenue and ITA No. 1755/Del/2012 filed by the assessee are against the order dated 6/5/2009 passed by Ld. CIT (A) IX, New Delhi for the A.Y 2003-04.

2. The grounds of appeal for Revenue are as under: - **(ITA 3052/Del/2011)**

- “1. *The order of Ld. CIT (Appeals) is erroneous & contrary to facts & law.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in deleting the penalty u/s271(1)(c) of the I.T Act, on account of addition of Rs. 17,42,063/- made by disallowing expenses incurred by reimbursement of communication fees paid to the directors of the assessee company.*
3. *Ld. CIT(A) ignored the finding recorded by the Assessing Officer and the fact that assessee furnished inaccurate particulars of its income by claiming non-allowable expenses on account of reimbursement of communication fees.*

3. The grounds of appeal for assessee are as under: - **(ITA NO. 1755/Del/2012)**

- “1. *That, on the facts and circumstances of the case and in law, the order passed by Ld. CIT(A) confirming the penalty levied by the Assessing Officer (“A.O”) u/s 272(1)(c) of the Income Tax Act, 1961 (“the Act”) amounting to Rs.52,13,000/- is wrong and bad in law.*
2. *That, on the facts and circumstances of the case and in law, the order passed by Ld. CIT(A) confirming the penalty levied by the A.O in respect of the disallowance/additions made in the assessment order and confirmed by Ld. CIT(A) and the Hon’ble Income Tax Appellate Tribunal (“ITAT”). The same has been done ignoring the fact that the appellant has made a full and true disclosure of all facts in respect of the claims made in the return of income. Accordingly, there was neither any concealment of income nor furnishing of any inaccurate particulars of income.*

3. *That, on the facts and circumstances of the case and in law, the order passed by Ld. CIT (A) confirming the penalty ignoring the fact that the appellant has made a full disclosure in respect of the claims made in the return of income and disallowances/additions are made due to difference of opinion on question of law between the A.O and the appellant. There was neither any concealment of income nor furnishing of any inaccurate particulars of income.*
4. *That, on the facts and circumstances of the case and in law, the order passed by Ld. CIT(A) confirming the penalty levied by invoking Explanation 1 to Section 272(1)(c) of the Act without establishing whether there was failure on the part of the appellant to offer any explanation or that the explanations offered were false or that the explanations given by the appellant were not bonafide, when admittedly full and true disclosure was made in the return of income and during the assessment proceedings by the appellant.*
5. *That, on the facts and circumstances of the case and in law, the order passed by Ld. CIT (A) confirming the penalty on the ground that the disallowances/additions made by A.O in the assessment order were confirmed by the Ld. CIT(A) and further confirmed by ITAT. The Ld. CIT (A) has failed to appreciate that a mere disallowance of claim does not automatically result in levy of penalty.*
6. *That the above grounds are without prejudice to and independent of one another.*

4. Brief facts of the case that Menlo Worldwide Forwarding India Pvt. Ltd. ("earlier known as Emery Worldwide (India) Pvt. Ltd") (appellant company/assessee") is a company incorporated in India on 12th March 1996. During A.Y 2003-04, the appellant company was engaged in the business of

freight forwarders providing services of freight handling, transportation to the exporters and importers etc. It entered into numerous transactions with its overseas group companies in the course of providing freight forwarding services to its customers for export as well as import of cargo on reciprocal basis.

5. The assessee company discontinued the business with effect from 1 April 2006 pursuant to global takeover of the business of the assessee company and its assets and certain liabilities were transferred to M/s UPS SCS (India) Pvt. Ltd in India and remaining employees left the services of the appellant company. Therefore, from 1 April 2006 the appellant company is not carrying on any business.

6. For the A.Y 2003-04, the return of income was filed u/s 139(1) of the Act on 2 December 2003 declaring income of Rs.5,33,96,550/- along with audited financial accounts, tax audit report etc.

7. Subsequent to the filing of above return of income for A.Y 2003-04 in the course of audit of books of accounts and financial statements for F.Y 2003-04 relevant to A.Y 2004-05 the auditors found that the revenue in respect of transactions with overseas group companies in the last quarter of F. Y 2002-03 relevant to A. Y 2003-04 was overstated by net amount of Rs.137, 73,479/-. Accordingly in the books of accounts for A.Y 2004-05, the error was rectified by reducing the revenue in Profit and Loss account and correspondingly reducing the amount receivable in the balance sheet. Consequently, the return of income for A.Y 2003-04 was revised under 139(5) of the Act on 31 March 2005 reducing the income to Rs.3,96,23,070 after correcting the above error as found out while auditing the accounts for A.Y 2004-05, since it pertained to A.Y 2003-04.

8. The assessment was completed u/s 143(3) of the Act at income of Rs.58, 584,342/- after making certain additions and disallowances. The CIT (A) disposed off the appeal vides his order dated 21st August 2007, partly allowing

the appeal. The Hon'ble ITAT disposed off the assessee's and departments appeal by combined order dated 13th October 2010. The appeal against the order of Hon'ble ITAT was not preferred due to discontinuance of business and as all the employees of the assessee had left.

9. The A.O passed an order u/s 271(1)(c) of the Act dated 30th March 2009 levying a penalty aggregation to Rs.58,53,210/- alleging furnishing of inaccurate particulars of income in respect of the items stated there in for the additions/disallowances in the assessment order.

10. The AR submitted that the Revenue has filed the appeal only on the issue of deleting the penalty u/s 271(1)(c) on account of addition of Rs.17,42,063/- made by disallowance expenses incurred by re-imbursement of communication fees paid to the Directors of the assessee company. The AR pointed out Para 6.1.5 & 6.2, the CIT (A)'s order wherein it has been categorically stated that in quantum appeal, the ITAT deleted the said disallowance as not being the payment for royalty or fees for technical services & CIT(A) held that as disallowance has been deleted by the ITAT, there is no escapement of income and, therefore, no penalty should be levied and therefore, we hold that the revenue's appeal does not sustain as the quantum appeal on this issue has been decided against the revenue and penalty will not stand for.

11. The AR submitted that the assessee while preparing the assessment return for A.Y 2004-05 has come to the knowledge that there was an error in net profit for the A.Y 2003-04 immediately, the assessee filed revised return for A.Y 2003-04 which was rejected by the Assessing Officer. The AR pointed out page 215 of the paper book wherein the revised return for A.Y 2003-04 was filed and in Schedule 9, there was a clear mention that there was some error for which the revised return has been filed. The AR also submitted that auditor himself has admitted that there was an error and no authority whatsoever has stated that the revised return were false. Therefore, there was a full disclosure on part of the assessee. The assessee relied on the judgment of Sherwani

Hospitalities Ltd VS. CIT 2013-35 Taxman.com 271 Delhi High Court wherein in Para 19 & 20 it is held that it is not uncommon and unusual for the assessee to bonafidely claim a particular expenditure as revenue deduction and expense but not succeed. Every addition or disallowance made does not justify and mandate levy of penalty for concealment u/s 271(1)(c) of the Act levy of penalty is not an automatic consequence when an addition is made by disallowing an expense and by not accepting the interpretation given by the assessee. Explanation 1 of Section 271(1)(c) clearly stipulates that the penalty can be imposed when the details furnished by the assessee are found to be incorrect, erroneous and false merely making a claim which is held as not sustainable under law should not lead to penalization when the assessee had furnished full details in the return itself in the claim is debatable, reasonably plausible or may will have been accepted. The assessee also relied upon the CIT Vs. Reliance Petro Product Pvt. Ltd. 2010 322 ITR 158 Hon'ble Supreme Court. The assessee also relied upon the Hon'ble Madras High Court decision in the case of CIT Vs. N. Nagraj Ball wherein the Hon'ble Karnataka High Court again reiterated the similar position. The AR further submitted that as relates to penalty under disallowance of managerial remuneration paid by the assessee, the AR relied upon the case of CIT Vs. Sree Visa Lakshi Mills Pvt. Ltd. 1999 239 ITR 910, the Hon'ble Madras High Court held that the proviso to Section 314 of the Companies Act comes into play only in cases where in the approval sought by the company is not granted at the person who has received remuneration is liable to refund the amount. The obligation cast on the employee to refund the money and the prohibition imposed on the company not to the wave recovery. However, do not have the effect of rendering the initial payment illegal. Thus, the penalty on the sale cannot be levied by the Assessing Officer.

12. The Ld. DR relied upon the penalty order and CIT (A)'s order to that effect.

13. We have perused all the documents on record and heard both the sides. The CIT (A) while confirming the penalty imposed by the Assessing Officer, has over looked the facts that the assessee has filed revised return when the assessee company itself came to the knowledge that there was an error in its return for A.Y 2003-04. The fact that company has at no stage hidden or intentionally acted which shows that they have deliberately filed the inaccurate, inadequate returns u/s 271(1)(c). If there is any inaccurate particulars of income furnished with intention then that has to be penalized but in present case, there was no such intention in the present case. The CIT (A)'s finding that the assessee is guilty of furnishing inaccurate particulars of income is in appropriate as the Assessing Officer at any point of time has not scrutinized 2003-04 of the assessment on records and issued any notice before the filing of revised return. Thus, when the error was known to the assessee, the assessee itself has filed the revised return this act shows that it is not intentional furnishing of inaccurate particulars of income on behalf of the assessee. The case laws placed before us are also in support of the assessee's case. Hence, the grounds of assessee's appeal are allowed and the Revenue's appeal does not sustain.

14. In result, the assessee's appeal is allowed and Revenue's appeal is dismissed.

The order is pronounced in the open court on 16th of February 2016.

Sd/-

**(J. S. REDDY)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 16/02/2016

R. Naheed

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	01/02/2016	PS
2.	Draft placed before author	02/02/2016	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	16.02 .2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	16.02.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

