

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "C",  
MUMBAI BEFORE SH. R.C.SHARMA, ACCOUNTANT MEMBER  
AND SH. PAWAN SINGH, JUDICIAL MEMBER

**ITA No.6384/Mum/2014 for Assessment Year: 2010-11**

Powerlet India Pvt. Ltd. Unit 94/95, SDFIII, Seepz, Andheri (East) Mumbai-400096 <b>PAN: AABCP4490K</b>	Vs.	Deputy Commissioner of Income Tax, 8(2) Aayakar Bhawan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)
Appellant by		Shri Ramesh S. Iyer AR
Respondent by		Shri K. Mohandas- DR
Date of hearing		02.08.2016
Date of Pronouncement		26.10.2016

**ORDER**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. The present appeal u/s 253 of the Income tax Act (Act) is directed by the assessee against the order of CIT(A)-17, Mumbai dated 27.07.2014 (corrected vide corrigendum dt 08.08.2014), arising out of penalty order levied u/s 271(1)(c) of the Act dated 29.08.2013 in respect of Assessment Year (AY) 2010-11.
2. The brief facts of the case are that the assessee filed his return of income on for relevant assessment year and the assessment was completed under section 143(3) on 5<sup>th</sup> Feb 2013 determining the total income of the assessee at Rs.1,58,60,730/-. While framing assessment the AO disallowed expenditure claimed under section 37(1)of the Act of total at Rs. 46,04,396/- and initiated penalty. No appeal was filed by assessee against the quantum assessment. The AO issued notice under section 274 read with section 271(1) (c )dated 25<sup>th</sup> Feb 2013, which followed a further notice dated 5 August 2013. The assessee filed its reply vide reply dated 27.08.2013. In the reply assessee contended that the disallowance was made only on the basis of material and information

furnished by assessee on the fact of computation of income and there was no question of furnishing inaccurate particular of income. The assessee further contended that the assessee company has close down its manufacturing operation in December 2008. The operation of the company was close to avoid further losses in future due to the incurring of fixed costs like wage and salaries to the workers since the turnover had dropped down by more than 80%. As the assessee did not have a business and the entire expenses were eligible for claiming deduction from the income of the business. The assessee did not contest the disallowance as it was not a material amount and the assessee did not want to stress the matter further. The contention of the assessee was not accepted by the AO, and the AO levied the penalty under section 271(1)(c ) on the amount of Rs.46,04,396 being the amount of disallowance on which a minimum penalty @ 100% which is minimum at Rs. 15,65,450/- was levied. Aggrieved by the order of AO the assessee filed appeal before Commissioner of Income Tax (Appeals) which was dismissed vide order impugned in the present appeal.

3. We have heard Id AR for both the parties and perused the material available on record. The Ld AR for the assessee argued that the order of penalty is not sustainable. It was argued that main business of the assessee company was manufacturing of switching power supplies, magnetic transformers and inductors. The manufacturing activities was carried out at SEEPZ Andheri (East) Mumbai 92. During the course of assessment the AO made the disallowance of claim of the assessee in respect of deduction of Rs. 4604396/- which consist of expenses incurred on upkeep of the premises like electricity charges, rent and water charges till the date of surrender of the premises and other administrative expenses like Audit fees, Legal and Professional charges. These were the expenses which were have necessary to be incurred by the assessee in respect of the fact whether manufacturing activities was carried or not. The assessee has not filed any appeal against the

assessment order as the loss for the relevant year is not to be carried forward as the assessee has closed down its business operation. The Id AR of the assessee further relied upon the decision of Hon'ble Apex Court in UOI Vs Rajasthan spinning and weaving Mills (2009) 23 DTR 158, CIT versus Reliance Petro Product Private Limited 322 ITR 158 and Hindustani Steel Ltd Versus the State of Orissa 83 ITR 26. On the other hand the learned DR for the revenue strongly supported the order of authorities below.

4. We have considered the rival contention of the Id AT for the parties and considered the material available on record. The assessee furnished all the particulars of income all the details in the return of income. Since the assessee was not allowed the deductions by AO holding that the assessee has not conducted the business activity thus the assessee is not entitled for such deduction. The assessee merely claimed the deductions which were not allowed. There is no finding of AO that there attempt on the part of assessee to hide income or furnishing something inaccurate particular of income or the income was not recorded in the books  
In the case of Dilip and Shroff's vs. Jt.CIT(2007) 6 SCC 329 the Hon'ble Supreme Court explained the term (concealment of income) and (furnishing inaccurate particular). The Court went to hold that in order to attract penalty u/s 271(1)(c), *mensrea* was necessary , the word 'inaccurate' signified the deliberate act or omission on behalf of the assessee. The Hon'ble Court further hold that clause-3 of section 271(1)(c) provided for discretionary jurisdiction upon the assessing authority as much as the amount of penalty could not be levied less than the amount sought to be evaded by the reasons of concealment of particulars of income and further held that furnishing of an assessment of value of property may not itself be furnished inaccurate particular and the AO must be found to have failed to prove that his explanation is not only bonafide to all facts relating to the same and material ought to the computation of income were not disclosed.

Further the Hon'ble Supreme Court in case of CIT vs. Reliance Petro Chemical Ltd. Reported viz 322 ITR 158, it was held by Hon'ble Apex Court that :

*“ in order to attract the provisions of section 271(1)(c), there has to be concealment of income or furnishing of inaccurate particulars of his income by the assessee. .... making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. Merely because the assessee claimed deduction which has not been accepted by the revenue, penalty u/s. 271(1)(c) is not attracted”.*

5. In view of the above discussion, wet find that no inaccurate particular was filed nor the income was e concealed by the assessee and the levy of the penalty was wrongly inflicted upon the assessee hence the order passed by AO dated 29/08/2009 which was confirmed by CIT(A) is set-aside and the appeal of the assessee is allowed.
6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 26<sup>th</sup> Oct 2016.

Sd/-

**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 26/10/2016

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार  
(Asstt.Registrar)  
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai