

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**I.T.A .No.6128/DEL/2013  
ASSESSMENT YEAR-2008-09**

<b>Maa Sharda Garments P. Ltd., E-24,           Basement, Lajpat Nagar-III, New Delhi. AAECM2357F</b>	<b>vs</b>	<b>ITO, Ward 6(1), New Delhi.</b>
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<b>Appellant by</b>	<b>Shri V.P. Bansal, FCA</b>
<b>Respondent by</b>	<b>Shri P. Dam Kanunjana, Sr. DR</b>

<b>Date of Hearing</b>	<b>09.02.2016</b>
<b>Date of Pronouncement</b>	<b>08.04.2016</b>

**ORDER**

**PER BEENA A. PILLAI, JM**

The present appeal is filed by the assessee against the penalty order dated 19/09/2013 passed by the CIT(A)'s-IX, New Delhi on the following grounds of appeal:

1. *“That on the facts and in the circumstances of the case and the law involved, the CIT(A) has erred in confirming the penalty of Rs. 2,20,000/- levied u/s 271(1)(c) of the Income Tax Act, 1961;*
  2. *That the appellant craves leave to add, alter, amend or vary any ground before or at the time of hearing.”*
2. Brief facts of the case are as under:

2.1. The assessee was engaged in the business of manufacturing and exports of Readymade Garments. The return of income for the A.Y. 2008-09 was filed on 30.09.2008 declaring an income of Rs. 3,63,484/-. The same was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and the assessment was completed u/s 143(3) vide order dated 30.11.2010 by the AO at the income of Rs. 10,08,934/-. The AO noted in the assessment order passed u/s 143(3) of the Act, dated 30.11.2010 that, during the year under consideration the assessee in its P&L account has shown receipts only on account of rent received amounting to Rs. 14,83,334/-.

2.2. The ld.AO observed that during the year under consideration the assessee did not perform any business activity. The balance sheets and P&L account of last three years were perused and it was found that the assessee has not undertaken any business activity during this period too. The assessee has booked certain expense in its P&L account, including depreciation of Rs. 2,80,521/- on the building let out for rent, which in any way is allowable as per provisions of the I.T. Act, 1961. The ld.AO disallowed the claim of business loss when no business activity has been performed during the year and the depreciation claimed on the let out building.

2.3. During the assessment proceedings, the AO initiated penalty proceedings u/s 271(1)(c) for filing inaccurate particulars of income. Subsequently, the AO levied the penalty

of Rs. 2,20,000/- u/s 271(1)(c) on 31.05.2011 giving adequate opportunity to the appellant.

3. Aggrieved by the order of the AO the assessee preferred an appeal before the ld. CIT(A).

4. The ld. CIT(A) confirmed the penalty on the ground that the assessee has wilfully filed inaccurate particulars of income.

5. Aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us.

6. The ld. AR submitted that penalty u/s.271(1) (c ) has been levied on two grounds which are;

(i) the assessee had claimed expenses under the head “business” since the company was formed with the object of setting up of unit of manufacturing and export of readymade garments. The AO disallowed the expenses so claimed on the basis that the project could not be implemented;

(ii) assessee had claimed depreciation against a property from which rental income was earned for the year under consideration.

6.1. The ld. AR submitted that the claim of expenses as well as depreciation is an error, which is bonafide and unintentional. The ld. AR submitted that the issue is squarely covered by the decision of the Hon’ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. vs. CIT reported in 322 ITR 158, wherein the Hon’ble Court had held that by no stretch of imagination and incorrect claim would tantamount to furnishing of inaccurate particulars.

7. On the contrary the ld. DR submitted that the assessee has claimed the rental income earned from the immovable property under the head “Income from House Property”. He thus

submitted that claiming of depreciation on the immovable property could not be treated as a bonafide mistake. The Id. DR placed reliance on the decision of Hon'ble Supreme Court in the case of Union of India (UOI) vs. Dharmendra Textile Processors reported in 306 ITR 277. Ld. DR submitted that the explanation appended to section 271(1)(c) of the Act indicates a strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. He submitted that the assessee in the present case has furnished inaccurate particulars in respect of the depreciation being claimed when the income earned from such property have been considered under the head "income from house property".

8. We have considered the rival submissions of both the parties as well as perused the paper book filed before us and the orders passed by the authorities below.

The relevant provision u/s. 271(1)(c), is reproduced herein below:

***Failure to furnish returns, comply with notices, concealment of income, etc.***

***“271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—***

*(c) has concealed the particulars of his income or furnished inaccurate particulars of [such income, or*

*Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—*

*(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or*

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation*

*is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,*

*then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”*

8.1. From the said provision, it is apparent that, if the Id.AO in the course of assessment proceedings is satisfied that, any person has concealed the particulars of income or furnished inaccurate particulars of such income, then he may levy penalty on the assessee. Thus, there are two different charges i.e. concealment of particulars of income or furnishing of inaccurate particulars of income. The penalty can be imposed only for a specific charge. Furnishing inaccurate particulars of income means, when the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are found to be incorrect whereas, concealment of particulars of income means, when the assessee has concealed the income and has not shown the income in its return or in its books of accounts.

8.2. Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton & Ginning Factory, reported in 359 ITR 565 has discussed the circumstances in which the section 271(1) (c ) could be levied.

Hon'ble Court held that;

“.....

*After insertion of Explanation 1 to section 271(1)(c ), the law on concealment and penalty has become stiffer. The Explanation as it stands now is a complete code having the following features:*

- (1) *Every difference between reported and assessed income needs an explanation;*
- (2) *If no explanation is offered, levy of penalty may be justified;*
- (3) *If explanation is offered but is found to be false, penalty will be exigible;*
- (4) *If explanation is offered and it is not found to be false, penalty may not be leviable,-*
  - (a) *Such explanation is bona fide.*
  - (b) *The assessee had made available to the Assessing Officer all the facts and materials necessary in computation of income.*

*Therefore, Explanation 1 understood in the proper context, in particular, clause (c ) of sub-section (1) of section 271 makes the intention of the Legislature manifest. It clearly sets out when penalty is leviable and when penalty is not leviable. The condition precedent for levying the penalty is the satisfaction of the authority that there is a concealment of the particulars of the income or inaccurate particulars are furnished to avoid payment of tax.”*

9. Let us analyse the disallowance made by the Id.Ao in the light of the ratio laid down in the case of CIT vs. Manjunatha Cotton & Ginning Factory(supra).

9.1. The Id.AO has disallowed the expenditure claimed by the assessee for setting up of the business of manufacturing and export of garments, on the basis that the project could not be implemented in the year under consideration. He thus levied penalty for furnishing inaccurate particulars of income. By applying the parameters laid down by Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning

Factory(supra), it appears that there was full disclosure by the assessee, however the expenditure claimed was inadmissible in law. Respectfully following the ratio laid down in CIT vs. Manjunatha Cotton & Ginning Factory(supra), we are of the opinion that the disallowance of the claim of expenses would not amount to furnishing of inaccurate particulars by the assessee. We therefore delete the penalty levied in respect of the disallowance of claim of expenditure.

9.2. In respect of depreciation claimed by the assessee, it is observed that the assessee has shown the income earned from renting of the property under the head "Income from House Property". The assessee has wilfully shown the rental income under the head "Income from House Property" and further claimed depreciation. The assessee in such a situation has filed wrong particulars of income, which is apparent from the face of the record. We, therefore, confirm the penalty levied by the Id. AO on the disallowance of the depreciation.

9.3. We, accordingly, direct the AO to calculate the penalty u/s 271(1)(c) only on the addition confirmed by us on depreciation that has been disallowed. In view of the above discussions, the grounds of the assessee stands partly allowed.

10. In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 08.04.2016

**Sd/-**  
**(J.S. REDDY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(BEENA A. PILLAI)**  
**JUDICIAL MEMBER**

Dated: 08.04.2016

'Kavita Arora'  
Copy forwarded to:

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

Asstt. Registrar