

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri N.K. Pradhan, Accountant Member**

**ITA NO.835/Mum/2014
Assessment Year: 2004-05**

DCIT-7(2), Room No.624, Aayakar Bhavan, M.K. Road, Mumbai-400020	बनाम/ Vs.	M/s Shree Ram Urban Infrastructure Ltd. (Formerly Shree Ram Mills Ltd.) Ganpatrao Kadam marg, Lower Parel Mumbai-400013
(राजस्व /Revenue)		(निर्धारिती /Assessee)
P.A. No.AACCS0454P		

राजस्व की ओर से / Revenue by	Shri Vishwas Mundhe-DR
निर्धारिती की ओर से / Assessee by	NONE

सुनवाई की तारीख / Date of Hearing :	21/02/2017
आदेश की तारीख / Date of Order:	08/03/2017

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 03/12/2013 of the Ld. First Appellate Authority, Mumbai, deleting the penalty of Rs.1,29,46,164/-, imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act) without appreciating the facts and the legal position.

2. During hearing, none was present for the assessee in spite of the fact that on 20/07/2015 and 11/07/2016, the appeal was adjourned at the request of the assessee and both the parties were aware that the appeal has been adjourned to 21/02/2017. In view of this factual matrix, we have no option but to proceed ex-parte, qua the assessee, tend to dispose off this appeal on the basis of material available on record. The ld. DR, Shri Vishwas Mundhe, defended the imposition of penalty.

2.1. We have considered the submissions of Ld. DR and perused the material available on record. The facts, in brief, are that the assessee is engaged in the business of textiles. The original assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter the Act) at loss of Rs.1,83,89,125/- on 14/12/2006 under the normal provisions of the Act and Rs.11,68,859/- under the MAT provision for section 115JB of the Act against the nil returned income. It was observed by the Assessing Officer that the assessee has

shown income from business centre as 'business income' which was treated as 'income from house property' and brought to tax the same at Rs.2,80,49,700/-. The ld. Assessing Officer also initiated penalty proceedings. Penalty of Rs.1,29,46,164/- at the rate of 100% was imposed u/s 271(1)(c) of the Act.

2.1. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the penalty was deleted for which the Revenue is aggrieved and is in appeal before this Tribunal.

2.2. We have perused the record along with the facts of the case and the legal position. It is not in dispute that the ld. Assessing Officer imposed penalty u/s 271(1)(c) of the Act as income from house property against the claim as business income by the assessee. Possibly, it may be a case for quantum addition but certainly not for imposing penalty u/s 271(1)(c) of the Act because due to ignorance or in good faith or due to the advice of the legal representative, the assessee might have claimed it differently but certainly it is not the case that anything was hide by the assessee. It is the duty of the Assessing Officer to assess the same under the correct head. We are of the view, even if a wrong claim is made by the assessee, that ipso facto, cannot lead to concealment. It is the duty of the Assessing Officer to take a correct decision. Even if a wrong claim has been made, it may be a good case for quantum addition but certainly not for imposing penalty u/s 271(1)(c) of the Act. This proposition is sheltered by the

decision from Hon'ble Apex Court in the case of Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC) and CIT vs Ajaib Singh & Company 253 ITR 630(P &H). While coming to this conclusion, the Hon'ble Apex Court in Reliance Petro Products Pvt. Ltd. (supra) observed as under:-

“A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.”

2.3. In the light of the above observation, we are reproducing hereunder the relevant section 271(1)(C) of the Act for ready reference and analysis:-

Section 271(1)(c) is as under:-

"271(1) If the Assessing Officer or the Commissioner (Appeals) or the 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."

2.5. A glance at this provision would suggest that in order to be covered under this section firstly, there has to be concealment of the particulars of the income of the assessee and secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of

a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where Hon'ble Apex Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. Hon'ble Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs. Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:-

"13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."

Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. 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. In *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* [2007(6) SCC 329], Hon'ble Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), *mens rea* was necessary, as according to the Court, the word "inaccurate" signifies a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of Section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only bona fide but all the facts relating to the same and material to the computation of his income were not disclosed

by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of *mens rea* was essential. It was only on the point of *mens rea* that the judgment in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. was upset. In Union of India Vs. Dharamendra Textile Processors (cited supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of *mens rea*. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276-C of the Act. The basic reason why decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled by Hon'ble Apex Court in Union of India Vs. Dharamendra Textile Processors (cited supra), was that according to the Court the effect and difference between Section 271(1)(c) and Section 276-C of the Act was lost sight of in case of Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited

supra). However, it must be pointed out that in Union of India Vs. Dharamendra Textile Processors (cited supra), no fault was found with the reasoning in the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra), where the Court explained the meaning of the terms "conceal" and inaccurate". It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that *mens rea* was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled. We are not concerned in the present case with the *mens rea*. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:-

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this order. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the

Act. In the light of the foregoing discussion, we are of the considered opinion that the Ld. Commissioner of Income Tax (Appeal) was justified in deleting the penalty. We upheld the same.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. DR at the conclusion of the hearing on 21/02/2017.

Sd/-

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 08/03/2017

Shekhar, P.S/निजी सचिव

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai,