

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'D' NEW DELHI**

**BEFORE :       SHRI C.M. GARG, JUDICIAL MEMBER &  
                  SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 6809/Del./2013  
Asstt. Year : 2008-09**

Lt. Col. Dr. Arvind Kumar Chaturvedi, S/o B.N. Chaturvedi, B-4/45, Paschim Vihar, New Delhi. (PAN: ADEPC 7488H) (Appellant)	vs.	ACIT, Circle 25(1), New Delhi.  (Respondent)
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Appellant by	:	Sh. Amit Agarwal, C.A.
Respondent by	:	Ms. Anima Barnwal, Sr. DR
Date of hearing	:	10.08.2016
Date of pronouncement	:	22.08.2016

**ORDER**

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the assessee against the order of ld. CIT(A)-XVIII, New Delhi dated 21.10.2013 for the assessment year 2008-09, challenging the penalty imposed u/s. 271(1)(c) of the IT Act, 1961 ('the Act' for short) on the following grounds :

*"1. That the Ld. CIT (A) has erred in law while sustaining the penalty amounting to Rs. 1,34,450/-, levied by the Ld. AO under section 271(1) (c) of the Income Tax Act, 1961. The penalty so sustained by the Ld. CIT (A) is bad in law and may please be deleted.*

2. *That the Ld. CIT (A) has erred in law while confirming the levy & imposition of penalty u/s 271(l)(c) of IT Act, 1961 on the consultancy charges, amounting to 3,62,945/- which were disallowed u/s 40a(iq) for not deducting the tax at source u/s 194(J) of the Income Tax Act, 1961.*
3. *That the penalty u/s 271(l)(c) of Income Tax Act can be levied only when there is concealment of particulars of income or furnishing of inaccurate particulars of income but in the present case, the assessee has neither concealed any particulars of income nor furnished inaccurate particulars of its income.*
4. *That in case, the TDS is not deducted by the assessee under the provisions of chapter XVII-B, then the penalty can be imposed only u/s 271C and not u/s 271(1)(c) of the I.T. Act.*
5. *That, as no penalty proceedings u/s 271C were initiated by the assessing officer, the penalty u/s 271(1)(c) also cannot levied in the present case.*
6. *That the Ld. CIT (A) has also erred in imposing the penalty on the disallowed amount of Rs. 36,497/- for purchase of the air ticket of Dr. Priyamvada Chaturvedi, the wife of the assessee, who went along with him to attend a medical conference which helped the assessee in his profession.”*

2. The brief facts of the case are that the appellant filed return of income declaring income of Rs.12,63,350/- on 28.08.2008, which was processed u/s. 143(1). Later on, the case was selected for scrutiny through CASS and statutory notices were issued. In response to the notices, the appellant filed details as required by the Assessing Officer. During the scrutiny proceedings, the ld. AO noted that the assessee is a doctor and he has paid professional fee of Rs.3,62,945/-, on which TDS has not been deducted. Out of these

professional charges, a sum of Rs.1,50,000/- was paid to his wife and rest amount of Rs.2,12,945/- to others. The AO has accepted that his wife was a doctor in the same line of profession and she was assisting to the appellant in his profession. Due to non-deduction of TDS u/s. 194J of the IT Act, the expenses claimed was disallowed u/s. 40(a)(ia) of the Act. The AO further noted that the assessee and his wife visited Japan, Belgium, California to attend seminars in connection with their profession. The AO, however, disallowed the expenses incurred by appellant on air tickets purchased for his wife of Rs.36,497/-. Against these additions, the appellant did not file any appeal and paid taxes accordingly. The AO initiated penalty proceedings on the above disallowances u/s. 271(1)(c) and imposed penalty of Rs.1,34,450/-. The assessee challenged the penalty order in appeal before the Id. CIT(A) who confirmed the order of the Assessing Officer. The Id. CIT(A) relying on the decision of Hon'ble Supreme Court in the case of Union of India vs. Dharmendra Textiles Processors, 306 ITR 277 (SC) and considering the fact that the assessee did not challenge the impugned disallowances in appeal, confirmed the penalty imposed by the assessee and dismissed the appeal of the assessee vide impugned order. Aggrieved by the same, the assessee is in appeal before the Tribunal.

3. During the course of hearing, the ld. AR of the assessee argued that the default of not deducting TDS on professional charges paid, falls under the provisions of Chapter XVII-B and for such default, if any, penalty could at the most be imposed u/s. 271C and not u/s. 271(1)(c) of the Act. There was full disclosure of professional charges paid to various professionals including assessee's wife before the AO, and therefore, it cannot be said that the assessee had concealed the particulars of income or had furnished inaccurate particulars thereof. The AO has also not disputed that the professional charges, whatsoever, paid by assessee were against the services provided by the professionals to the appellant and these facts have also not been questioned or disputed even in the penalty proceedings. Therefore where there was complete disclosure of the impugned expenses before the AO, no penalty could be levied u/s. 271(1)(c) of the Act. Similarly, total expenditure incurred on foreign visit of appellant and other professionals including his wife were completely declared before the AO and the AO has disallowed the amount of air tickets incurred on the foreign tour of appellant's wife, as professional who admittedly assisted the appellant. It was submitted that the AO has made disallowance for non-deduction of tax at source, which does not go to show that the appellant has concealed the particulars of its income or had furnished inaccurate particulars of income. The disallowances of

expenditure debited in the profit and loss account do not come in the category of concealment of particulars of income. Reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts, 322 ITR 158 (SC) and of Hon'ble Delhi High Court in CIT vs. Mahanagar Telephone Nigam Limited in ITA No. 626/2011 (copy placed in the paper book).

4. The ld. DR, on the other hand, relied on the order of the lower authorities.

5. After hearing the submissions of both the parties and perusing the material available on record, we do not find it a fit case for imposition of penalty. It is notable that the appellant has paid professional charges of Rs.3,62,945/- which fact stood accepted by the AO. However, the disallowance has been made u/s. 40(a)(ia) on account of failure of assessee to deduct tax at source u/s. 194J. For such failure on the part of assessee, there is specific penal provision u/s. 271C and hence, the provisions of section 271(1)(c) of the Act pertaining to concealment of particulars of income or furnishing of inaccurate particulars of income, could not be resorted to by the AO. Similarly, the disallowance of expenditure incurred by assessee on foreign tour of his wife debited in profit and loss account and claimed as business expenditure,

does not suggest any concealment or furnishing of inaccurate particulars of income. If the claim of any expenditure disclosed by assessee is disallowed by the AO, no penalty u/s. 271(1)(c) is leviable as propounded by Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (supra) wherein it has been held that wrong claim made by the assessee does not amount to concealment of any income or furnishing of inaccurate particulars of income. Besides, the Id. Authorities below have not noted as to what inaccurate particulars were furnished by the assessee. Similarly, omission on the part of assessee to deduct tax at source on payment of professional fees and disallowance u/s. 40(a)(ia) in itself does not amount to concealment or furnishing of inaccurate particulars of income. In view of above discussion, we do not find any justification to sustain the penalty imposed by AO and confirmed by the Id. CIT(A) u/s. 271(1)(c) of the IT Act in the attending facts and circumstances of the present case. Therefore, the appeal of the assessee has merit and is fit to be allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.08.2016.

Sd/-  
**(C.M. GARG)**  
Judicial Member

Sd/-  
**(L.P. SAHU)**  
Accountant Member

Dated : 22.08.2016