

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI

Before Shri Mahavir Singh, Judicial Member
& Shri Rajesh Kumar, Accountant Member

ITA No.2127/Mum/2014
Assessment Year : 2004-05

The Dy. CIT 10(2), Mumbai	Vs.	M/s.Metco Enterprises Pvt. Ltd. 12-A, Wing B, Sita Estate, Mahul Road, Chembur, Mumbai – 400 071 PAN AABCM5237H
(Appellant)		Respondent)

Appellant By : Shri G N Maknana
Respondent By : None

Date of Hearing :23.05.2016

Date of Pronouncement : 27.05.2016

ORDER

Per Mahavir Singh, Judicial Member

This appeal by the revenue is arising out of the order of the CIT(A) – 22, Mumbai, in appeal No.CIT(A)-22/AC 10(2)/IT-4/2012-13/CIT(A) 21/IT/251/2013-14 dated 21.01.2014. The assessment was framed by the Additional CIT Range 10(2), Mumbai, vide his order dated 12.12.2006 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The penalty under dispute was levied by the Additional CIT Range 10(2), Mumbai vide his order dated 13.03.2012 u/s. 271(1)(c) of the Act.

2. The only issue in this appeal of the revenue is against the order of the CIT(A) deleting the penalty levied by the AO u/s. 271(1)(c) in respect of the following items:

i.	Drivers Bhatta Charges	Rs. 8,48,786/-
ii.	Trip Expenses	Rs.22,91,936/-
iii.	Road Expenses	Rs.12,01,319/-
iv.	Transport Expenses	Rs.12,81,000/-

3. Briefly stated facts are that the assessee is engaged in the business of trading, transport contractor and commission agent. During the course of assessment proceedings, the AO made disallowance of transport expenses, drivers bhatta charges, trip expenses and road expenses on estimate basis. The assessee has incurred bhatta charges amounting to Rs.56.58 lacs, out of which the AO disallowed 25%. Similarly, the assessee incurred trip expenses of Rs.57.29 lacs and road expenses of Rs.30.03 lacs out of which the AO disallowed 22.91 lacs and 12.01 lacs respectively. Similarly, the assessee incurred transportation charges of Rs.67.20 lacs out of which the AO disallowed 12.81 lacs (approximately 20%) by pointing out certain deficiencies in the bills and vouchers. The AO initiated penalty proceedings and also levied penalty for furnishing of inaccurate particulars of income on the above items by observing that the assessee's case do not involve any debatable issue and assessment is based on findings unearthed by the AO, which tantamount to furnishing of inaccurate particulars of income by the assessee. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) deleted penalty by observing as under:

"Regarding driver bhatta charges, trip expenses and road expenses, A.O. had disallowed the amount of 50% of the expenditure on adhoc business. The CIT(A) has reduced it to 40% of the expenditure. As it is adhoc disallowance A.O. cannot point out any inaccurate particulars or concealment of income as it is legal claim of the appellant. It cannot be stated that it has filed inaccurate particulars or concealment of income as held by Supreme Court in the case of CIT vs. Reliance Petroproducts P. Ltd. 322 ITR 158, hence, levy of penalty on the above three issues is cancelled.

With respect to transportation charges of Rs.12,81,000/-, appellant's directors are hiring the travels of their name and appellant has to pay certain expenses as per sub-contract agreement. Appellant has to pay insurance charges, replacement of tyre, tube, diesel and oil charges and directors will receive this amount as hiring charges. The A.O. had disallowed this amount, however, CIT(A) upheld the issue. However, on verification of records it was found that there no addition on account of transport charges in earlier and subsequent assessment years. Hence two views are taken by the A.O. and CIT(A) i.e. one adding the amount and other not adding the amount. As two views are possible on this issue, penalty cannot be levied. Penalty is cancelled on this issue. "

Aggrieved, now the revenue is in appeal before the Tribunal.

4. We have heard the learned DR and have gone through the facts and circumstances of the case. We find that the assessee has produced complete books of account, bills and vouchers relating to expenses incurred on driver bhatta charges, trip expenses, road expenses and also transportation expenses. The disallowance is made by the AO qua these expenses at the rate of 20% to 25% on adhoc basis. We find that no serious discrepancy was pointed out by the AO in the bills, vouchers or books of account and simply adhoc addition was made by making certain disallowance. We have gone through the penalty order and noted that the AO has not pointed out any inaccuracy in particulars filed by the assessee. He only pointed out that there are certain defects in the bills and vouchers for which he made disallowance on adhoc basis by restricting the disallowance to 20% to 25%. We find that this proposition is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts P. Ltd., [2010] 322 ITR 158 (SC), wherein the Hon'ble Supreme Court has observed as under:

"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 of transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. 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. 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.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intention of the Legislature."

5. In view of the above facts and circumstances, it is not a fit case for levy of penalty and the CIT(A) has rightly deleted the same. We confirm the order of the CIT(A) and the appeal of the revenue is dismissed.
6. In the result, the revenue's appeal is dismissed.

Order pronounced in the open court on this day of 27th May 2016.

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**
Mumbai; Dated : 27th May, 2016.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

SA

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai