

**आयकर अपीलिय अधिकरण “ सी ” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “C”, MUMBAI**

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND  
SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA NO. 4426/MUM/2016 : (A.Y : 2010-11)**

M/s Pinstorm Technologies Pvt. Ltd.  
Swati Building, North Avenue  
Santacruz (W)  
Mumbai – 400 054  
**PAN : AADCP4854B**

Vs. Dy. Commissioner of  
Income Tax 13(1)(2)  
Aaykar Bhavan  
MK Road  
Mumbai – 400 020

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / **Appellant by : Shri Haridas Bhat**  
प्रत्यर्थी की ओर से **Respondent by : Ms. Beena Subhash**

सुनवाई की तारीख / **Date of Hearing : 06/01/2017**  
घोषणा की तारीख **Date of Pronouncement : 31/03/2017**

**आदेश / ORDER**

**PER C.N.PRASAD (J.M.) :**

This appeal is filed by the Assessee against the order of the Ld. CIT (Appeals)-21, Mumbai dated 17.05.2016 for the assessment year 2010-11 in confirming the penalty levied u/s 271(1)(c) of the Act.

2. Briefly stated the facts are that the Assessee company for the assessment year 2010-11 filed return of income electronically on 14.02.2012 declaring loss of Rs.16,10,43,542/-. The assessment was completed u/s 143(3) on 28.02.2013

determining the loss at Rs.1,81,57,433/- . While completing the assessment, the Assessing Officer noticed that certain expenses were not allowable and these expenses were not added back to the total income in the computation of income and therefore required the Assessee to furnish necessary details in respect of the following expenditure :-

		(Amount in Rs.)
1.	Advance written off	92,89,916/-
2.	Deposits written off	18,30,300/-
3.	Provision for doubtful debits	2,54,91,606/-
4.	Provision for doubtful advances	88,59,577/-
5.	Capital work in progress written off	8,56,53,266/-
6.	Loss on sale of fixed assets	21,484/-
	Total	13,11,45,849/-

3. The Assessee submitted that it has not claimed the said expenditure as deduction in the computation of income, however, the Assessing Officer reduced the said expenses from declared by the Assessee holding that loss appearing in the acknowledgement of the e-return filed is similar to that appearing in the intimation passed u/s 143(1). Therefore, since the above expenses were not allowable while computing the income of the Assessee, the Assessing Officer was of the view that the Assessee failed to add back these expenses in the computation of income, thereby penalty proceedings were initiated u/s 271(1)(c) for concealing/furnishing inaccurate particulars of income. Subsequently, the Assessing Officer passed order u/s 271(1)(c) on 31.03.2015 levying penalty u/s 271(1)(c) of the Act holding that Assessee has furnished inaccurate particulars of income and has committed a clear default within the meaning of section 271(1)(c) read with Explanation-1 to section

271(1)(c) of the Act and thereby suppressed the real income of Rs.13,19,73,099/-.

4. The Assessee submitted that the said expenses were shown as disallowances in the tax audit report by the auditors and during electronic filing of the return the said disallowances were not entered properly in the column of disallowances and accordingly it showed a loss. It was submitted that the Assessee did not notice the mistake for the reason that the professional who was engaged for upholding the return made this mistake. It was further submitted that it was under the impression that since the inadmissible expenditure is reported in tax audit report it will be considered as disallowance. Assessee submitted that these expenses were never claimed by the Assessee in the first place and secondly eventual loss has wrongly mentioned in the return of income was not allowed to be carried forward since loss was foregone due to late filing of return. It was submitted that the wrong entry in the return of income/mistake apparent from the records since the said amounts are expressly disallowed in the tax audit report. Therefore, it was contended before the Assessing Officer that since these expenses were not allowable as the return was filed belatedly there was no loss to the revenue and therefore requested to drop the proceedings initiated u/s 271(1)(c) of the Act. However, the Assessing Officer passed order u/s 271(1)(c) dated 31.03.2015 levying penalty.

5. It was the contention of the Assessing Officer that the expenses which were debited were in the nature of provisions and since these expenses were not allowable, the Assessee should have written back in the computation of

income which the Assessee has failed to do so and therefore there was furnishing of inaccurate particulars of income/concealment of income. The Assessing Officer also observed that disallowance of such items has been mentioned by the auditors in the tax audit report dated 02.05.2012 furnished by the Assessee. According to the Assessing Officer, the Assessee who is e-filing the return is supposed to file true and correct information. If such items which are not allowable as an expense as per IT Act are claimed in the e-return, thereby reducing the income it amounts to filing of inaccurate particulars of income. He further observed that the Assessee is supposed to verify the figures reported in the e-return. He rejected the contention of the Assessee that such expenses which have been added back at the time of assessment proceedings were pointed out for disallowance in tax audit report because the Assessee had not given effect while filing the e-return. It was also the observation of the Assessing Officer that excess expenditure claimed was noticed only when the return of income was subjected to detailed scrutiny. Therefore, he concluded that there is willful concealment and furnishing of inaccurate particulars of income by the Assessee by not adding back the expenses which are inadmissible. On appeal, the Ld. CIT (Appeals) sustained the penalty observing that the Assessee by not substantiating its claim of expenses failed to offer explanation. He also observed that there need not be willful concealment for levying of penalty u/s 271(1)(c) of the Act.

6. The Ld. Counsel for the Assessee submits that the Assessee had filed a belated return of income showing a loss which is not eligible to be carried forward, and was not claimed in any subsequent years. The return of income was filed electronically by the professional appointed by the company, wherein

the disallowances reported in tax audit report were not added back to the income. Thus, the disallowances of Provisions, capital items etc. of Rs.13,11,45,849/- also listed in the tax audit report were added back during the assessment. He submits the following list of additions is as mentioned below:-

Particulars	Amt	Disclosure
CWIP Written off	85653266	Clause 17(f) of Tax Audit report
Provision for doubtful debts	25491606	Clause 17(f) of Tax Audit report
Advances written off	9289916	Addition agreed suo moto
Provision for doubtful advances	8859577	Clause 17(f) of Tax Audit report
Deposits written off	1830000	Addition agreed suo moto
Statutory Audit Fees	716950	Clause 17(f) of Tax Audit report
Tax Audit fees	110300	Clause 17(f) of Tax Audit report

The Ld. Counsel for the Assessee submits that Rs.12,08,31,699/- were expressly shown as inadmissible in the tax Audit Report and the two other items were advances, and deposits written off. He submits that the addition of the same was agreed suo moto during the assessment, since there was no use of the said loss to the assessee as it could not have been carried forward. He further submits that the Provision for Doubtful debts was properly disclosed in Profit and Loss account in the ITR, however it was missed out in calculations. Therefore he submits that even after all the disallowances considered by the AO, the resultant total income was negative ie. loss.

7. The Ld. Counsel for the Assessee further submits that the claim of expenses in the Return of income was a mistake while uploading the return of Income Electronically. There is a human error in filling electronic form, the same was remained unnoticed while filing the return. The Ld. Counsel submits that during the assessment the error was noticed, and revised computation was furnished explaining the variation and clearly mentioning the addition of Rs. 131,145,849/- on account of Advance & Deposits written off, Provision for doubtful debts & advances, capital expenditure written off etc. The Ld. Counsel submits that there is lack of intention on the part of Assessee to conceal the particulars of income. The return of loss is not useful to the Assessee since the loss cannot be carried forward and was not set off due to delay in filing the return. The Ld. Counsel further submits that the Assessee has taken the professional help and relied on their work. The tax consultant made human error in filling electronic return for uploading Income Tax related particulars. The Ld. Counsel submits that the disallowance of expenses were reported in the Tax Audit report, which is the complete disclosure of the issues covered. The Ld. Counsel submits that in view of the following decisions no penalty is attracted in its case.

- 1) Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (2012) 77 DTR (SC)
- 2) CIT vs. Somany Evergree Knits Ltd. (2013) 352 ITR 0592 (Born)
- 3) CIT vs. Balaji Distilleries Ltd. (2013) 255 CTR 0265: (2013) 81 DTR  
0190

The Ld. Counsel for the Assessee prayed that penalty of Rs. 4,48,57,660/- levied on additions/disallowances of Rs. 13,11,45,849/- by the AO may please be deleted.

8. The Ld. DR vehemently supported the orders of the authorities below.

9. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. The Assessee filed return of income electronically on 14.02.2012 declaring loss of Rs.16,10,43,542/-. Admittedly this return was filed belatedly and beyond due date for filing return of income u/s 139(1) of the Act and in which case the business loss reported in the return is not eligible for carry forward and set off against income in subsequent assessment years. The Assessee submits that the return and computation was prepared by the then CFO and he did not properly upload the return by showing the expenses disallowable as reported in the tax audit report. The Assessee contended that in the tax audit report the auditors have mentioned that these expenses were not allowable, however, while uploading the return, the employee had made a mistake in not disallowing these expenses. The Assessee further contended that in any case return was filed belatedly in which event the loss reported by the Assessee is not eligible for carry forward and there is no occasion for claiming such loss in the future years, therefore, there is no loss to the revenue. The Assessee contended that it is a mistake committed by the employee of the company and therefore it was submitted that there is no deliberate concealment or furnishing of inaccurate particulars by the Assessee. It was contended that it is a human error in filing electronic form of return and it was remained unnoticed while filing the return. The error came to be noticed only in the course of assessment proceedings and it was explained that the Assessee has not claimed any expenditure.

10. In the course of hearing before us on a query from the bench as to why this error has occurred and directed to file an affidavit of the said employee, the Assessee filed affidavit of one Mr. Mahesh Murthy the Managing Director of the Assessee company stating that the return of the Assessee Company for the assessment year 2010-11 was filed by the then CFO Mr. CA Sudesh Vaidya and the said Mr. Sudesh Vaidya has since left the company and migrated to United Kingdom. It was deposed in the affidavit that Mr Sudesh Vaidya had made an inadvertent error of not considering the disallowances which were mentioned in the tax audit report while uploading the return of income. It was also asserted that the return of income was filed belatedly, therefore, the same cannot be revised. It was further asserted that even after the subject disallowances, the return of income was a loss return and since return was filed belatedly the same did not have effect in the carry forward of losses. It was therefore asserted that the said mistake was revenue neutral and did not have any current or future tax effect.

11. On a careful consideration of the facts it appears that there is no intention on the part of the Assessee to conceal the income or furnish inaccurate particulars of income. The return of loss filed belatedly is not useful to the Assessee since the loss cannot be carried forward and it cannot be set off against the income in subsequent years as the return was filed belatedly. Therefore the Assessee has to forgo whatever loss is shown in the return of income. It appears that the CFO was entrusted with the filing of return and he made a mistake in not properly uploading the return by filling up the return with the disallowances which were already reported by the auditors in the tax audit report. The CFO had undoubtedly made an error in filing electronically

by uploading incorrect particulars. Therefore for the fault of the professional, the Assessee cannot be penalized. There is no intention of furnishing of any inaccurate particulars or concealment of income as the facts undoubtedly suggest in this case.

12. The Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd. Vs. CIT [348 ITR 306] considered a situation where the Assessee by mistake claimed deduction in respect of provision towards payment of gratuity in its return of income even though tax audit report indicated that such provision was not allowable. The Hon'ble Supreme Court held as under :

"14. During the course of hearing this appeal against the judgment and order of the Calcutta High Court, we had required the assessee to explain to us how and why the mistake was committed.

15. The assessee has filed an affidavit dated 14th September, 2012 in which it is stated that the assessee is engaged in Multidisciplinary Management Consulting Services and in the relevant year it employed around 1000 employees. It has a separate accounts department which maintains day to day accounts, pay rolls etc. It is stated in the affidavit that perhaps there was some confusion because the person preparing the return was unaware of the fact that the services of some employees had been taken over upon acquisition of a business, but they were not members of an approved gratuity fund unlike other employees of the assessee. Under these circumstances, the tax return was finalized and filled in by a named person who was not a Chartered Accountant and was a common resource.

16. It is further stated in the affidavit that the return was signed by a director of the assessee who proceeded on the basis that the return was correctly drawn up and so did not notice the discrepancy between the Tax Audit Report and the return of income.

17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.

18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under Section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.

21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside.”

13. In the case of CIT Vs. Somany Evergree Knits Ltd. [352 ITR 592], the Bombay High Court held as under :

“7. We have heard the rival submissions. The Id. Counsel for the assessee reiterated the stand of the assessee as put forth before the revenue authorities. He further relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Deep Tools Pvt. Ltd., 274 ITR 603(P&H), wherein it was held that bonafide and inadvertent mistake of a chartered accountant while filing a return of income will not amount to furnishing of inaccurate particulars of income. Reliance was also placed on the decision of the Punjab & Haryana High Court in the case of CIT vs. Shahabad Company-operative Sugar Mills Ltd. (2009) ITS 2255[(decision of P&H High Court in ITA No.19 of 2007 (O&M)]

dated 12/10/2009, wherein it was held that making a wrong claim for deduction of depreciation of Guest House does not invite an order imposing penalty. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158(SC), wherein it was held that making an incorrect claim does not tantamount to furnishing of inaccurate particulars. The Hon'ble Supreme Court further held that penalty will be attracted only when the details supplied in the return are not true. The Ld. D.R relied on the order of the CIT(A).

8. We have considered the rival submissions. As far as the loss on sale of machineries of the garment unit is concerned, the P&L Account filed by the assessee along with return of income clearly gives a description of the loss as loss on sale of garment unit assets. It is this loss which was added to the net loss as per P&L Account in the computation of total income ( under the head prior period income/expenditure/extra ordinary items). The fact that this loss was in respect of assets of the garment unit has been very clearly disclosed in the return of income. The Chartered Accountant of the assessee did not advise the assessee as to the correct legal position and the return of income was filed on the above lines. When this was pointed out in the course of the assessment proceedings the assessee accepted the addition made by the AO. The fixed assets of the garment division clearly show that the assets sold were depreciable assets, thus there was enough evidence available in the documents filed along with the return of income to show that the claim made by the assessee are not in accordance with law. In the above circumstances the plea of the assessee that the claim for deduction was made on account of a bonafide mistake has to be accepted. When all facts are available on record it cannot be said that the assessee attempted to furnish inaccurate particulars. It is a case making an incorrect claim. The bonafide of the assessee are further established by the fact that no appeal was filed by the assessee against the order of the AO.'

14. The Hon'ble Madras High Court in the case of CIT Vs. Balaji Distilleries Ltd [81 DTR 190] following the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers pvt. Ltd, (supra) held that the absence of due care does not mean that the Assessee was guilty of furnishing inaccurate particulars to conceal his income.

15. In view of the above discussion and respectfully following the above decisions, we hold that there is no concealment of income or furnishing of inaccurate particulars of income by the Assessee, but it is only a mistake in not adding back the expenses disallowable in the computation of income while uploading the return of income in the given facts and circumstances of the Assessee's case. Thus, we direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act.

16. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on the 31<sup>st</sup> day of March 2017.

Sd/-

**RAJENDRA**  
लेखा सदस्य /  
ACCOUNTANT MEMBER

Sd/-

**C.N.PRASAD**  
न्यायिक सदस्य /  
JUDICIAL MEMBER

मुंबई / Mumbai; दिनांक / Dated 31/03/2017

LR, SPS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार  
(Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mum