

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE PRESIDENT  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA Nos.-5280 & 5281/Del/2013  
(Assessment Years: 2002-03 & 2003-04)**

Aarti Jain W/o Deepak Kumar Jain 47, Sadar Kabari Bazar, Meerut. AATPJ7767L	vs	ITO Ward-1, Meerut.
<b>Assessee by</b>	<b>Sh. P.S. Kashyap, CA</b>	
<b>Revenue by</b>	<b>Sh. Sarabjeet Singh, DR</b>	

<b>Date of Hearing</b>	<b>03.05.2016</b>
<b>Date of Pronouncement</b>	<b>28.07.2016</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

Both these appeals have been preferred by the assessee against the order confirming the penalty u/s 271(1) (c) of the Income Tax Act, 1961. ITA No. 5280 pertains to AY 2002-03 & ITA No. 5281 pertains to AY 2003-04. Both these appeals emanate from the common order dated 13/06/2013 passed by the Ld. CIT (A)-Meerut.

2. The facts of the case are that during the AY 2002-03 the assessee had received gifts amounting to Rs. 16 lakhs from three persons, whereas in AY 2003-04 the assessee had received gifts amounting to Rs. 10 lakhs from two persons. The assessee had filed affidavits, gift deeds, copies of ITRs, copies of Wealth Tax Returns, copies of bank accounts and copies of PAN for all the donors during the assessment proceedings. The assessee had shown these gifts in her capital accounts also. However, the AO added these amounts to the income of the assessee on the basis that the gifts have been received by the assessee from persons who were not relatives, that the transactions of the gifts were isolated in nature and that the assessee could not prove the genuineness of these gifts transactions. In the quantum appeals, the Ld. CIT (A) confirmed the additions and the appeals before the ITAT were dismissed for non prosecution. In penalty proceedings, the AO imposed penalty u/s 271(1)(c) of Rs. 489,600/- for AY 2002-03 and of Rs. 371,200/- for AY 2003-04 which has been confirmed by the Ld. CIT(A) and now the assessee has preferred these appeals before the Tribunal. Since both these appeals were heard together, they are being disposed of by this common order. The grounds of appeal raised by the assessee are as under:

Grounds of appeal in ITA 5280:

1. *That the CIT (A) has erred by upheld the penalty order as imposed by the AO u/s 271(1)(c) at Rs. 4,89,600/- CIT(A).*
2. *That without prejudice to ground no. 1 above the CIT(A) has erred by upheld the penalty as levied by AO u/s 271(1)(c) on the basis of his alleged interference without appreciating the material and evidence available on records, is based on surmises, conjecture, bad in law and at any rate very excessive.*

Grounds of appeal in ITA 5281:

1. *That the CIT (A) has erred by upheld the penalty order as imposed by the AO u/s 271(1)(c) at Rs. 3,71,200/-.*
2. *That without prejudice to ground no. 1 above the CIT(A) has erred by upheld the penalty as levied by AO u/s 271(1)(c) on the basis of his alleged interference without appreciating the material and evidence available on records, is based on surmises, conjecture, bad in law and at any rate very excessive.*

3. The Ld. AR submitted that in the quantum proceedings the assessee had discharged her onus by providing copies of gift deeds, affidavits, copies of ITRs, copies of Wealth Tax Returns, copies of bank statements etc. and hence the initial burden regarding identity, genuineness and credit worthiness of the donors had been demonstrated. Further there was no concealment or furnishing of inaccurate particulars by the assessee and in view of the decision of the Hon'ble Apex Court in CIT vs. Reliance Petro

Products Pvt. Ltd., 322 ITR 158 (SC) that mere making of a claim which is not sustainable in law by itself will not amount to furnish all inaccurate particulars, the penalty levied u/s 271(1) (c) was patently wrong and liable to be deleted.

4. The Ld. DR submitted that the persons who are alleged to have gifted the amounts were having meager source of income and that the AO had made independent enquiries u/s 133(6) of the Income Tax Act and had thereafter reached the conclusion that these gifts were not genuine and hence it was a fit case for the imposition of penalty u/s 271(1) (c) of the Act. It was also submitted that the Income Tax Returns of the donors were not accompanied by balance sheets and the Wealth Tax Returns were also not accompanied by the computation of net wealth and, therefore, the credit worthiness of the donors could not established. The ld. DR strongly supported the orders of the authorities below and submitted that the penalties imposed should be confirmed.

5. We have heard the rival submissions and perused the material on record. The Hon'ble Supreme Court, in the case of Hindustan Steel Ltd. v. State of Orissa 83 ITR 26, had laid down the position of law by holding that the Assessing Officer is not bound to levy penalty automatically simply because the quantum addition has been sustained. Also in case of CIT v. Khoday

Eswara (83 ITR 369) (SC), incidentally reported in same ITR Volume, it is held that penalty cannot be levied solely on basis of reasons given in original order of assessment. The Hon'ble Supreme Court has recently reiterated the law in case of Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519 by holding in Para 62 that finding in assessment proceedings cannot automatically be adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle. The statute requires a satisfaction on the part of the Assessing Officer: he is required to arrive at a satisfaction so as to show that there is primary evidence to establish that the assessee had concealed the amount or furnished inaccurate particulars and this onus is to be discharged by the Department. While considering whether the assessee has been able to discharge his burden the Assessing Officer should not begin with the presumption that he is guilty. Since the burden of proof in penalty proceedings varies from that in the assessment proceedings, a finding in the assessment proceedings that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceedings constitutes good evidence in the penalty proceedings. In the penalty proceedings the authorities must consider the matter afresh as the question has to be considered from a different angle. It is important to keep in mind the fundamental legal proposition that Assessment proceedings are

not conclusive. Assessment proceedings and penalty proceedings are separate and distinct. Findings in Assessment proceedings don't operate as res judicata in penalty proceedings. For this proposition reliance is placed on the decision in CIT vs. Dharamchand L. Shah (1993) 204 ITR 462 (Bom). In Vijay Power Generators Ltd vs. ITO (2008)6 DTR 64 (Del) it was held that *"It is well settled that though they constitute good evidence do not constitute conclusive evidence in penalty proceedings."* During penalty proceedings, there has to be reappraisal of the very same material on the basis of which the addition was made and if further material is adduced by the assessee in the course of the penalty proceedings, it is all the more necessary that such further material should also be examined in an attempt to ascertain whether the assessee concealed his income or furnished inaccurate particulars. Thus, under penalty proceedings assessee can discharge his burden by relying on the same material on the basis of which assessment is made by contending that all necessary disclosures were made and that on the basis of material disclosed there cannot be a case of concealment of income or furnishing inaccurate particulars of income. Further if there is any material or additional evidence which was not produced during assessment proceedings same can be produced in penalty proceedings as both assessment and penalty proceedings are distinct and

separate. In CIT vs. M/s Sidhartha Enterprises (2009) 184 Taxman 460 (P & H)(HC) it was held that the judgment in Dharmendra Textile cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. Even so, the concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default.

6. At this juncture it may be apposite to refer to the decision of the Hon'ble Supreme Court in the case of *CIT v. Reliance Petroproducts (P.) Ltd.* [2010] 322 ITR 158/189 Taxman 322, wherein the court while interpreting the provisions of section 271(1)(c) of the Act, has held that a glance at the said provision would suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate of his income. In the facts of that case, the court found that it was not a case of concealment of the particulars of the income, nor was it the case of the revenue either. However, the counsel for the revenue suggested that by making an incorrect claim for the expenditure on interest, the assessee had furnished inaccurate particulars of income. The court observed that it had to only see as to whether in that case, as a matter of fact, the assessee had given inaccurate particulars. The court noted that as per Law Lexicon, the meaning of the

word "particular" is a detail or details (in the plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particular" used in section 271(1)(c) would embrace the meaning of the details of the claim made. The court further observed that 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." The court observed that reading the words "inaccurate" and "particulars" 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. The court noted that it was an admitted position that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect and accordingly, held that, *prima facie*, the assessee could not be held guilty of furnishing inaccurate particulars. The court repelled the contention raised by the counsel for the revenue that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". The court held that 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. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. The court further observed that there can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income.

7. Reverting to the facts of the present case, the Assessing Officer, in the penalty orders, has observed that the assessee had concealed the income and has furnished inaccurate particulars. However, the penalty orders are woefully silent on the issue as to how this satisfaction of concealment/furnishing of inaccurate particulars was arrived at. The Ld. CIT (A) has relied on the principle of preponderance of probability while confirming the penalties. The Ld. CIT (A) has held that since the assessee had received a sum of Rs. 26.00 lacs as gifts from 5 parties in a span of two years with whom the assessee had only family relation and that since there was no occasion to warrant these gifts, the credibility and bona fide of assessee's explanation was eroded and therefore, the penalty was sustainable. We are of the considered opinion that this kind of finding might be very relevant in quantum proceedings but will not suffice in penalty proceedings. With regard to the provisions of section 271(1)(c) of the Act

pertaining to penalty, the Hon'ble Apex Court has authoritatively laid down that making of a claim by the assessee which is not sustainable will not tantamount to furnishing inaccurate particulars. In CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC), the Hon'ble Apex Court has held as follows:

*“A glance at this provision would suggest that in order to be covered, there has to be concealment of particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The present is not a case of concealment of income. That is not the case of the Revenue either. However, the Ld. Counsel for the revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of income. 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 learned counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income." We do not think that*

*such can be the interpretation of the concerned words. 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.”*

8. Although both the lower authorities have held that the assessee has furnished inaccurate particulars/concealed income, on a consideration on the facts, such a view is not tenable in the present appeal. Therefore, respectfully following the judgment of the Hon'ble Apex court in the case of Reliance Petroproducts Pvt. Ltd. (Supra) we set aside the impugned orders and direct the AO to delete the entire penalty for both the years.

9. In the final result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 28.07.2016

Sd/-  
**(G.D. AGRAWAL)**  
**VICE PRESIDENT**

Dated: 28.07.2016

\*Kavita Arora

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI