

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7541/Mum/2012
(निर्धारण वर्ष / Assessment Year: 1998-99)

Asia Exports Hinduja House, 171, DR A.B. RD, Worli Mumbai Pin:400018	बनाम/ Vs.	ACIT 11(1) Aayakar Bhavan, M.K. RD Mumbai Pin:400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFA6680N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Mr. J.P. Bairagra (AR)
Revenue by:	Shri Rajesh Kumar Yadav, DR

सुनवाई की तारीख / Date of Hearing: 10.08.2017

घोषणा की तारीख / Date of Pronouncement: 27.09.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 17.10.2012 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 1998-99 in which the penalty levied by the AO has been confirmed.

2. The assessee has raised the following grounds:-

- “1. On facts and circumstances of the case and in law the penalty levied u/s 271(1)(c) of the I.T. Act lacks jurisdiction. The penalty levied should be cancelled.
2. On facts and circumstances of the case and in law, the penalty levied u/s 271 (1)(c) of the I.T. Act is without recording proper satisfaction. The penalty levied should be cancelled.

3. *On facts and circumstances of the case and in law the CIT(A) has erred in upholding the penalty levied of Rs.37,36,140/- u/s 271(1)(c) of the I.T. Act. The penalty levied should be cancelled. The appellant reserves its right to add to alter, amend, modify or delete any of the grounds taken in this appeal. The ground taken in this appeal are without prejudice to each other.”*

3. The brief facts of the case are that the assessee filed its return of income for the A.Y. 1998-99 on 02.11.1998 declaring total income to the tune of Rs.10,00,11,243/-. The return was processed u/s 143(1) of the Act. Subsequently, the assessment was completed u/s 143(3) of the I.T. Act, 1961 on 30.03.2001 assessing the total income to the tune of Rs.2,68,15,560/- after making the addition of Rs.1,68,70,312/- under the head income from business or profession. Thereafter, the penalty proceeding was initiated. After getting the reply, the penalty to the tune of Rs.37,36,140/- was levied. The assessee filed an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We noticed that the assessee filed its return of income declaring total income to the tune of Rs. 10,00,11,243/- on 02.11.1998. Thereafter, the assessment of the assessee was completed in view of the provision u/s 143(3) of the I.t. Act on 30.03.2001 assessing the total income to the tune of Rs. 2,68,15,560/-. The Assessing Officer raised addition to the tune of Rs.1,68,70,312/-. It is to be seen in which circumstances the Assessing Officer raised the addition in the assessment. The assessment order dated 30.03.2001 is on the file in which we noticed that the certain claim raised

by the assessee in connection with the Foreign Travelling Expenses, Hotel Expenses and disallowance of Interest Expenses was declined. The assessee travel up to ITAT and the case of the assessee was decided by Hon'ble ITAT in **ITA. No.4851/M2003** in which the addition on account of Foreign Travelling Expenses to the tune of Rs.13,62,975/-, Hotel Expenses to the tune of Rs.22,60,633/- & disallowances of Interest Expenses to the tune of Rs.70,51,075/- was confirmed. Apparently, the claim raised by the assessee in connection with Foreign Travelling Expenses, Hotel Expenses and Disallowance of Interest Expenses was disallowed and on account of the said disallowance the penalty proceeding was initiated by Assessing officer which was confirmed by the CIT(A). Now, it is to be seen that in the said circumstances the penalty is leviable or not. In the instant case, three claim of the assessee has been declined firstly the Assessing Officer declined the claim of Foreign Travel Expenses to the tune of Rs.13,62,975/-. The assessee claimed the business expenditure on account of Foreign Travel expenses of Mrs Harsha A Hinduja partner of the appellant firm in respect to visit at U.K an Maldives Island. The said expenses were disallowed because the same was not found for business purpose and was treated as personal expenses. Disallowance of the claim of the assessee nowhere attract the penalty in view of the law settled in **CIT v/s Reliance Petro products(P)Ltd (2010) 322ITR 158/189 Taxman (SC)**. It is held that:-

“The word particulars must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was 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 u/s 271 (1)(c). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.(para 9)

The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was argued that the falsehood in accounts can take either of the two forms (i) an item of receipt may be suppressed fraudulently; (ii) 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. Such contention could not be accepted 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 attract the penalty u/s 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty u/s 271(1)(c). That is clearly not the intendment of the Legislature.(Para 10)."

5. Similar finding has been given by the Hon'ble Supreme Court, High Courts and Tribunal in the cases title as **T. Ashok Paif Vs. CIT (292 ITR 11) SC, Chempure Vs. ITO (40 SOT 164), CIT Vs. Shivlal Desai & Sons 114 ITR 377, CIT Vs. Zoom Communication (P.) Ltd. 2010, 327 ITR 510/191 Taxman 179 (Delhi) Brij Mohan Vs. CIT (1979) 120 ITR 1 & CIT v/s Reliance Petro products(P)Ltd (2010) 322ITR**. In view of the said law no

penalty is levied because it cannot be said that there is a concealment of income furnishing the inaccurate particulars of income. The other disallowance is in connection with the hotel expenses to the tune of Rs.22,60,633/-, where the expenses were claimed on account of the hotel expenses incurred for Mr. Sunil Bharwani who deal the exported the goods worth Rs. 4.81 crores at Jakarta Indonesia however, the deal was not effected and the amount was claimed as bad debt. Finding no evidence the claim was disallowed. The third claim was in connection with the disallowance of interest to the tune of Rs.4914334/- u/s 143A and interest to the tune of Rs.609680/- on account of advanced given to S.P. Hinduja (HUF) and interest to the tune of Rs.1526851/- on account of advances given to group concern. The total interest was disallowance to the tune of Rs.7051071/-. The said interest was not found for business purpose nor substantiated by assessee by giving the evidence on record. Any how the claim was declined by the authorities. It is not a case of furnishing the inaccurate particulars and concealment of income. The said disallowance nowhere attract the penalty in view of the above mentioned law i.e. as **T. Ashok Paif Vs. CIT (292 ITR 11) SC, Chempure Vs. ITO (40 SOT 164), CIT Vs. Shival Desai & Sons 114 ITR 377, CIT Vs. Zoom Communication (P.) Ltd. 2010, 327 ITR 510/191 Taxman 179 (Delhi) Brij Mohan Vs. CIT (1979) 120 ITR 1 & CIT v/s Reliance Petro products(P)Ltd (2010) 322 ITR 158/189 Taxman (SC)**. In view of the above mentioned law, we are of the view that the finding of the CIT(A) is wrong against law and facts which is not

liable to be sustainable in the eyes of law. Accordingly, we set aside the finding of the CIT(A) and delete the penalty. Accordingly, the appeal of the assessee is hereby ordered to be allowed.

6. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 27.09.2017

Sd/-

Sd/-

(G.S. PANNU)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27.09.2017

v.p. singh

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)-
4. आयकर आयुक्त / CIT
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