

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6096/Del./2014
(ASSESSMENT YEAR : 2007-08)**

DCIT, Circle 15 (1), vs. M/s. Ripe Components Technologies
New Delhi. Pvt. Ltd.,
B – 8 / 14, Vasant Vihar,
New Delhi.

(PAN : AADCR2107F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 27.09.2017

Date of Order : 29.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Deputy Commissioner of Income-tax, Circle 15 (1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 29.08.2014 passed by the Commissioner of Income-tax-XVIII, New Delhi qua the assessment year 2008-09 deleting the penalty levied u/s 271(1)(c) on the ground that :-

“On the facts and circumstances of the case and law, the Ld. CIT (A) has erred in deleting the

penalty of Rs.10,76,340/- by not appreciating the findings of the Assessing Officer and material evidence on record.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessment of the assessee for Assessment Year 2008-09 was completed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) at an income of Rs.5,65,78,592/- as against the returned income of Rs.5,95,36,759/-. During the quantum proceedings, the assessee had claimed depreciation to the tune of Rs.31,97,677/- on account of temporary structure which was disallowed and consequently AO expressed his satisfaction to initiate the penalty proceedings u/s 271(1)(c) of the Act.

3. On the basis of completed assessment u/s 143 (3) of the Act, penalty proceedings were initiated. Assessee failed to appear before the AO. AO proceeded to conclude that since the addition made on account of depreciation of temporary structure of Rs.31,97,677/- has been confirmed by the Id. CIT (A), the assessee is found to have evaded tax by filing inaccurate particulars and thereby concealed income of Rs.31,97,677/- on which tax evaded comes to Rs.10,76,340/- and consequently levied the penalty of Rs.10,76,340/-.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the penalty of Rs.10,76,340/-. Feeling aggrieved, the assessee has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the assessee had claimed the depreciation to the tune of Rs.31,97,677/- on temporary structure which was disallowed by the AO and confirmed by the Id. CIT (A). It is also not in dispute that assessee has not been heard during the penalty proceedings by the AO to whom show-cause notice was issued on 05.03.2013 and penalty was levied on 18.03.2013.

8. In the backdrop of the aforesaid facts and circumstances of the case, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?”

9. Hon'ble Supreme Court in a case cited as *CIT vs. Reliance Petro Products Pvt. Ltd – 322 ITR 158 (SC)*, while interpreting the provisions contained u/s 271(1)(c) of the Act, decided the identical issue in favour of the assessee. Operative part of which is reproduced for ready reference as under :-

“A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests 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 particulars of his income. The meaning of the word “particulars” used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.”

10. Bare perusal of the penalty order apparently goes to prove that there is no finding whatsoever on the part of the revenue authorities that any details supplied by the assessee in his return is found to be incorrect, erroneous or false. In case, the assessee has

claimed any deduction/depreciation/exemption, it is for the revenue authorities to examine if the same is not sustainable.

11. Ld. CIT (A) deleted the penalty by relying upon the judgments of Hon'ble Delhi High Court cited as *Karan Raghav Exports Pvt. Ltd. – 349 ITR 112* and *CIT vs. Pradeep Agency – 349 ITR 470*, as relied upon by the assessee. Since the penalty in this case has been levied merely for the reason that the assessee has claimed inadmissible depreciation on temporary structure, the provisions contained u/s 271(1)(c) of the Act are not attracted as has been held by Hon'ble Supreme Court in *Reliance Petro Products Pvt. Ltd.* (supra).

12. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by the ld. CIT (A), hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 29th day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XVIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.