

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SH. G.D.AGRAWAL, HON'BLE PRESIDENT
AND
SH.K.N.CHARRY, JUDICIAL MEMBER**

**ITA No. 6755 & 6756/Del/2015
(ASSESSMENT YEAR: 2008-09 & 2010-11)**

Future Creations Pvt. Ltd., A-42, Naraina Indl. Area, New Delhi-110028. PAN-AAACF4288N	vs	ACIT, Cent. Circle-5, New Delhi.
(Appellant)		(Respondent)

Appellant by	Sh. Sanchit Mathur, CS
Respondent by	Sh. Arun Kumar Yadav, Sr.DR
Date of Hearing	20.09.2017
Date of Pronouncement	09.10.2017

ORDER

PER BENCH

These two appeals are preferred by the assessee challenging the orders dated 31.07.2015 in Appeals Nos. 266 & 267/14-15 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-2, New Delhi for 2008-09 & 2010-11 Assessment Years respectively.

2. Facts are identical in both the appeals as such we find it just and convenient to dispose off these two appeals by way of a common order. Briefly stated facts are that the assessee is a private limited company and for the relevant assessment year is under consideration. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 (in short "Act") but subsequently the AO re-

opened the assessment by issuing a notice u/s 148 of the Act and concluded the re-assessment by making an addition on account of bad debts claimed by the assessee. Simultaneously, the AO initiated proceedings u/s 271(1)(c) of the Act and concluded them to levying the penalty which is equivalent to 100% of the tax tried to be evaded by the assessee, appeals preferred by the assessee are dismissed by the Ld.CIT(A) by way of the impugned order. Hence, the assessee is before us in these appeals challenging the levy of penalty on account of the bad debts.

3. It is the arguments of the Ld.AR that in respect of the AY 2008—09, the assessee company deposited an FDR as a security with the Haryana Urban Development Authority which was forfeited and encashed by the authority, as such it was treated as bad debts, so also for the AY 2010-11, the assessee had shown rent receivable but not be received ultimately, as bad debts. Ld.AR submitted that the assessee furnished all these particulars fully and truly in the return of income but merely because the AO had taken different view to disallow these two amounts treated as bad debts by the assessee, the AO invoked section 271(1)(c) of the Act which is permissible under law in the absence of any concealment of income or furnishing of inaccurate particulars thereof. Per Contra, Ld. DR submitted that a false claim amounts to furnishing all inaccurate particulars as such the authorities below are justified in levying the penalty.

4. We have carefully gone through the record. Absolutely there is no dispute as to whether the assessee furnished the particulars of the so-called bad debts truly and fully in the return of income. However, there is a difference of opinion between the assessee and the AO as to whether such bad debts are allowable as

deduction under law. There is a difference between “false claim” and “wrong claim”. Here in this case merely because the AO thought it fit to disallow the claim of deduction, *per se*, it does not become a false claim or amount to concealment of income or furnishing all inaccurate particulars thereof. So long as the assessee had furnished all the details relating to the claim of deduction in the return of income, in the absence of any allegation as to the false claim, invoking to the provisions of section 271(1)(c) of the Act is bad under law. If the assessee prefers a claim patently without incurring any liability to such expenditure, it becomes false claim but preferring claim having incurred liability, even if not permissible to be allowed as deduction, cannot be a false claim and at the best, it could be a wrong claim. With this view of the matter, while respectfully following the decision of the Hon’ble Apex Court in the decision of *CIT vs Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 [SC]*, we hold that every disallowance of any claim for deduction will not automatically lead to the levying of the penalty and we, therefore, find it difficult to sustain the levy of penalty in this matter. We, therefore, direct the AO to delete the penalty for both the years.

5. In the result, the appeals filed by the assessee are allowed.

The order is pronounced in the open court on 09th October, 2017.

Sd/-
(G.D.AGRAWAL)
PRESIDENT

Amit Kumar

Date:- 09.10.2017

Copy forwarded to:

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

Sd/-
(K.N.CHARRY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI