

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, KOLKATA**

**Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 372/KOL/2015**  
Assessment Year: 2009-10

*DCIT, Circle-2, Siliguri .....Appellant*

*M/s Shelcom Properties Pvt. Ltd.....Respondent*  
*[PAN : AAHCS 6766 R]*

**Appearances by:**

*Shri Shallong Yaden appearing on behalf of the assessee.*

*Shri S.K. Tulsyan, appearing on behalf of the Revenue.*

Date of concluding the hearing : August 23, 2017

Date of pronouncing the order : October 31, 2017

**ORDER**

**Per J. Sudhakar Reddy, Accountant Member :-**

This appeal by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-Siliguri (hereinafter the 'Id. CIT(A)'), dt. 20.02.2015 wherein the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (the 'Act') was cancelled.

2. The assessee company is a real estate developer and is a promoter. The assessee has constructed a building on a land measuring 61.52 kottah. On this land the assessee got approval of a plan in the month of March, 2005, thereafter constructed residential flats on the said land. The assessee

stated that floor area of each residential flat was less than 1500 sq feet so the assessee is entitled to deduction u/s 80IB (10) of the Income Tax Act, 1961. In support of the said claim the assessee filed form 10CCB along with the audit report , completion certificate of the said building, copy of sanctioned plan, land deed's copy etc. The assessee stated that in this financial year major portion of the flats were sold and the entire income from that residential project is deductible u/s 80IB(10)of the Income Tax Act, 1961. Inspector was deputed to verify the assessee's claim. He made the inquiry and furnished a report. The assessee has also constructed other projects and recognized profit thereon.

Out of total sale proceeds of Rs. 7,29,55,320/-, a sum of Rs. 3,72,68,020/- was received on sale of flats on which the assessee claimed that it was entitled to 80IB claim on the rest of the sale proceeds on other flats the assessee declared profit and offered that profit for taxation.

The assessee furnished a separate trading & profit and loss account in respect of the project on which the assessee is entitled to 80IB(10) claim. The assessee filed the return of income on 11.02.2010. This is a belated return of income. The provision u/s 80AC of the Income Tax Act, 1961 stated as follows:

*“Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of*

April, 2006 or any subsequent year, any deduction is available u/s 80IA or Section 80IB or Section 80IC [or section 80ID or section 80IE], no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of Section 139.”

This lacuna was pointed out to the assessee by the AO and the submission of the assessee in this regard was carefully considered and it was found that the cases referred to by it has no relevance in this case. The Ld. AO held that none of the cases were related to deduction u/s 80IB.

Therefore, the provisions of section 80AC of the Income Tax Act, 1961 was held as squarely applicable in this case and hence, the assessee is not entitled to the deduction u/s 80IB(10) of the Income Tax Act, 1961. The assessee's claim of deduction u/s 80IB(10) is therefore rejected by the AO.

3. On the appeal, the Ld. CIT(A) confirmed the order by the AO. On further appeal, the Kolkata Bench of ITAT deleted the addition. Thereafter, the revenue moved Hon'ble High Court and the High Court vide its order dated 16.01.2014 confirmed the order of the AO and reversed the order of the I.T.A.T. The AO gave a show cause notice to the assessee and thereafter levied penalty u/s 271(1)(c) of the Act. Aggrieved the assessee carried the matter on appeal. The First Appellate Authority deleted the penalty by observing that no inaccurate particulars of income were filed by the

assessee and that only the claim of the assessee for deduction u/s 80IB(10) was found to be incorrect and under those circumstances penalty cannot be levied. Aggrieved the Revenue is in appeal before us.

4. The Hon'ble High Court in this case has allowed the revenue appeal by disallowing the claim for deduction u/s 80IB(10) on the ground that the return of income was not filed in time. Hence, in our considered opinion it is neither the case of furnishing inaccurate particulars nor of concealment of income. The assessee had furnished all the necessary information as per law. The information is not found to be inaccurate. No income was considered by the assessee. The disallowance was made on technical grounds. The Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. reported in (2010) 322 ITR 158 wherein it was held as follows:

*“Penalty under s. 271(1)(c)-Concealment- Disallowance of claim for deduction- In order to attract the provisions of s. 271(1)(c), there has to be a concealment of income or furnishing of inaccurate particulars of his income by the assessee- In the instant case, assessee claimed deduction of interest on loans taken by it for purchase of shares- AO disallowed such interest- Admittedly, no information given in the return was found to be incorrect or inaccurate- Hence, the assessee cannot be held guilty of furnishing inaccurate particulars- Making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars- Merely because the assessee claimed deduction which has not been accepted by the Revenue, penalty under s. 271(1)(c) is not attracted- If the contention of the Revenue is accepted, the assessee would be liable for penalty under s. 271(1)(c) in every case where the claim made by the assessee is not accepted by the AO for any reason- That is clearly not the intendment of the legislature.*

*Held:*

*A glance at the provision of s. 271(1)(c) would suggest that in order to be covered, 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. Present is not the case of concealment of the income. That is not the case of the Revenue either. 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 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. Therefore, it is obvious that it must be shown that the conditions under s. 271(1)(c) must exist before the penalty is imposed. 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- CIT vs. Atul Mohan Bindal (2009) 225 CTR (SC) 248 : (2009) 28 DTR (SC) 1: (2009) 9 SCC 589 followed.*

*(Paras 7 & 8)*

*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. In this case, there is 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 inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. 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 under s. 271(1)(c). If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271(1)(c). That is clearly not the intendment of the legislature. The Tribunal, as well as the Ld. CIT(A) and the High Court have correctly reached this conclusion. Shree Krishna Electricals vs. State of Tamil Nadu & Anr. (2009) 23 VST 249 (SC) applied; Reliance Petroproducts (P) Ltd. (Judgment dated. 23<sup>rd</sup> October, 2007 of the Gujrat High Court in Tax Appeal No. 1149 of 2007) affirmed.*

*(Paras 9,10, & 12)*

Conclusion:

*Merely because the assessee claimed deduction of interest expenditure which has not been accepted by the Revenue, penalty under s. 271(1)(c) is not attracted; mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee."*

Respectfully following the proposition laid down the above case laws to the facts of the cases, we uphold the order of the first appellate authority and dismissed the appeal of the Revenue.

5. In the result, the appeal of the Revenue is dismissed.

***Kolkata, the 31<sup>st</sup> day of October, 2017.***

Sd/-  
**[S.S. Viswanethra Ravi]**  
Judicial Member

Sd/-  
**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 31.10.2017  
SB, Sr. PS

*Copy of the order forwarded to:*

***1. DCIT, Circle-2, Siliguri  
"Aayakar Bhawan", B-Wing,  
Ground Floor, Paribahan Nagar,  
Matigara, Siliguri-734010.***

***2. M/s Shelcom Properties Pvt. Ltd.  
7<sup>th</sup> Floor, Niladri Shikhar Building,  
Hill Cart Road, Siliguri-734001***

3. CIT(A)-

4. CIT- ,
5. CIT(DR),

True copy

By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches