

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 5709/Del/2015
A.Y. 2009-10**

Cosmos Industries Ltd. Flat no.5A 18, Vasant Vihar Poorvi Marg New Delhi 110 017 PAN: AAACC6682R	vs.	DCIT Circle 3(1) New Delhi
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Atiq Ahmad, Sr.D.R
Date of Hearing	20 th November, 2017
Date of Pronouncement	29 th November, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present penalty appeal has been preferred by assessee against order dated 31/07/15 passed by Ld.CIT(A)-2 for assessment year 2009-10 on the following grounds of appeal:

"1. The ld.CIT(A) has erred in law and on merits of case was not justified in sustaining penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs.9886101/- whereas the assessee has not concealed any

particulars of its income or not furnished any inaccurate particulars of its income.

2. The ld.CIT(A)-2 was not justified in ignoring judgments delivered by Hon'ble ITAT, New Delhi in assessee's own case deleting penalty on merits for Assessment Year 2004-05 on the same issue wherein it was held:-

“where there is no finding that any detail 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 the 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.”

3. Further in quantum appeal of Assessment Year 2004-05, 2006-07 and 2007-08 Hon'ble ITAT pronounced the judgement on 23.5.2014 holding that:

“Thus the AO obviously went wrong in concluding that the SDF loan was from IFCI and not from Government of India. CIT(A) has taken into consideration all these facts while rightly deleting the addition and we do not find any error whatsoever with the well reasoned observations recorded by her in the impugned order.”

4. The ld.CIT(A) was not justified in not considering various case laws of Apex Court and jurisdictional and other High Courts cited by the appellant.

5. The appellant claims to add, amend or withdraw any of the ground of appeal on or before the date of hearing.”

2. Brief facts of the case are as under:

The assessee filed its return of income declaring total income of Rs. 1,24,49,030/-. The case was selected for scrutiny under section 143 (3) and assessment was completed at an income of Rs. 4,15,04,355/-by making an addition under section 43B for non-payment of interest of STF loan of Rs. 2,90,85,325/-. Assessing officer thereby levied penalty of Rs. 98,96,101/-under section 271 (1) (c) of the Act on the said disallowance made by the assessing officer.

2.1. Aggrieved by the order of Ld. AO, assessee preferred appeal before Ld. CIT (A), who confirmed the penalty levied.

2.2. Aggrieved by the order of Ld. CIT (A), assessee is in appeal before us now.

3. On perusal of the order passed by Ld. CIT (A), it is observed that the same issue has arisen in the earlier assessment years being 2004-05, 2006-07 and 2007-08 where the Ld. CIT (A) deleted the additions by holding that, as the loan was received by the assessee from government of India, provisions of section 43B is not applicable. Against the orders of Ld.CIT (A) for the above stated assessment years revenue had preferred an appeal before this Tribunal and this Tribunal vide order dated 23/05/14 in ITA No. 877/Del/11, 1819/Del/11, 1906 & 1965/Del/11 confirmed the deletion of penalty.

3.1. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before us.

4. It is observed from the facts of the present case which arises from the record that assessee had received loan from the sanctioned budget of Ministry of Food and Civil Supplies, for the rehabilitation and modernisation of sugar Mills. It is further observed that all these details were fully disclosed in the audited accounts filed by assessee along with original return of income.

4.1. Ld. DR placed reliance upon the orders passed by authorities below.

5. We have perused the orders passed by the authorities below and records placed before us. Ld. Assessing Officer has not anywhere recorded regarding the details filed by assessee along with its return of income being incorrect or false. Merely because Assessing Officer is of the opinion regarding the deduction being inadmissible to the assessee, would not attract penalty provisions under section 271 (1) (c) of the Act. A mere making of claim by assessee which may not be sustainable in law by itself will not amount to furnishing of inaccurate particulars or any concealment by assessee. The claim of deduction was very much there in the returns filed by assessee supported by audited accounts.

5.1. Hon'ble Supreme Court in the case of *CIT vs Reliance Petro Products Pvt. Ltd.* reported in 322 ITR 158 held as under:

“Where there is no finding that any detail 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 the 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.”

5.2. Respectfully following the above cited decision, we are inclined to delete the penalty levied by Assessing Officer which was confirmed by Ld. CIT (A). Accordingly the grounds raised by assessee in its appeal stand allowed.

6. In the result appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29.11.2017.

Sd/-

(R.S. SYAL)
Vice President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated 29th November, 2017.

*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

ITA 5709/Del/2015
Assessment Year 2009-10
Cosmos Industries Ltd.

		Date	
1.	Dragon dictation	20/11	
2.	Draft placed before author	23/11	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS	29/11	
5.	Kept for pronouncement on	29/11	
6.	File sent to Bench Clerk		
7.	Order uploaded		