

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

Before Shri Mahavir Singh (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.1109/Mum/2016
(Assessment year: 2010-11)

ACIT 5(2)(2), Mumbai	vs	M/s Infinite Computer Solutions (I) Ltd Plot No.155, Somdutt Chamberws-II, 9, Bhikaji Cama Palace, New Delhi 110 066 PAN : AAACI5145D
APPELLANT		RESPONDEDNT

Appellant by	Shri Saurabh Raj
Respondent by	Shri Thomas Kutty M.V.

Date of hearing	28-12-2017
Date of pronouncement	29-12-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-10, Mumbai 20-11-2015 and it pertains to AY 2010-11. The revenue has raised the following grounds of appeal:-

1(a). On the facts and in the circumstances of the case, the Ld.CIT(A) erred in deleting the penalty levied u/s 271(1)(c) of Rs. 44,43,404/- on the ground that a wrong claim which is not sustainable in the eyes of law will not become a base for concealment of penalty.

1(b). On the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the claim of deduction u/s 35D made

by the assessee was prima facie not admissible as the project had not commenced during the previous year relevant to the assessment year 2010-2011 and, hence, the assessee had furnished inaccurate particulars of its income.

1(c). On the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the assessee accepted that its claim of deduction u/s 35D was not in order and did not contest the disallowance of the deduction u/s 35D in appeal.

1(d). On the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the Hon'ble Delhi High Court has considering the decision of the Hon'ble Supreme Court in the case of Reliance Petro products Pvt. Ltd. (322 ITR 158) held in the case of CIT v. Zoom Communication Pvt. Ltd. (2010) 191 Taxman 179 (Delhi) that if an assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona fide, Explanation to section 271(1)(c) would come into play and assessee will be liable to penalty u/s 271(1)(c).”

2. The brief facts of the case are that the assessee company engaged in the business of development of computer software, filed its return of income for the assessment year 2010-11 on 27-09-2010 declaring total income of Rs.25,97,48,000. The assessment was completed u/s 143(3) on 30-01-2014 determining total income at Rs.27,39,70,181 after making addition on account of disallowance of expenditure u/s 14A of Rs.77,500 and disallowance of claim of deduction u/s 35D amounting to Rs.1,41,44,681. While disallowing expenses u/s 35D, the AO observed that the assessee has claimed deduction towards expenses directly in the statement of computation of total income without routing through P&L Account. The AO has made addition on the basis of revised statement of total income filed by the assessee withdrawing the claim

made u/s 35D as the business of the assessee company has not commenced during the year under consideration.

3. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) for wrong claim of deduction towards IPO expenses u/s 35D of the Income-tax Act, 1961. The AO initiated penalty proceedings on the ground that the assessee has filed inaccurate particulars of income, which warrants levy of penalty u/s 271(1)(c). In response to notice issued by the AO assessee submitted that mere claim of expenses or disallowance of expenses does not tantamount to furnishing of inaccurate particulars of income so as to levy penalty u/s 271(1)(c) of the Act. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt Ltd 322 ITR 158 (SC). The AO, after considering relevant submissions of the assessee and also relying upon the decision of Hon'ble Supreme Court in the case of CIT vs KP Madhusudan reported in 251 ITR 99 (SC) observed that the assessee has filed incorrect claim in the return of income in respect of deductions claimed towards IPO expenses u/s 35D which warrants levy of penalty u/s 271(1)(c) of the Act.

3. Aggrieved by the penalty order, assessee preferred appeal before CIT(A). Before CIT(A), assessee submitted that the AO was erred in levying penalty u/s 271(1)(c) in respect of disallowance of IPO expenses u/s 35D on the wrong footing that the assessee has filed inaccurate particulars of income without appreciating the fact that during the course of assessment proceedings, the

assessee has filed revised statement of total income withdrawing deduction claimed u/s 35D. The assessee further submitted that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars of income. In this regard relied upon certain judicial precedents. The CIT(A), after considering relevant submissions of the assessee and also relying upon the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt Ltd (supra) observed that when the appellant has withdrawn the claim by filing a revised statement before the AO during the course of assessment proceedings itself, the AO should have considered the request while finalising the penalty proceedings. The withdrawal of claim in the course of assessment proceedings is a sufficient ground to prove that the mistake is inadvertent and there is no intention to avoid taxes. With these observations, the CIT(A) deleted penalty levied by the AO. The relevant portion of the order of the CIT(A) is extracted below:-

5.1 I'm not convinced with the concealment penalty levied by the AO. The disallowance made is in order so far as the quantum is concerned. When the appellant has withdrawn the claim by filing a revised statement before the AG during the course of assessment proceedings itself, the AG should have considered the request while finalising the penalty proceedings. The withdrawal of claim in the course of assessment proceedings is a sufficient ground to prove that the mistake is inadvertent and there is no intention to evade taxes. In my considered view there is no hiding of facts while filing the return of income but there is a wrong claim. As it is a settled law that a wrong claim which is not sustainable in the eyes of law will not become a base for concealment penalty. Reliance is placed on the decision of the Honourable Supreme Court in the case of Reliance Petroproducts

P Ltd 322 ITR 158. Further, when the appellant has withdrawn the claim, there is no base on which penalty can be levied. In view of these facts, the penalty is not sustainable. Accordingly the ground is allowed.”

4. The Ld.DR submitted that the Ld.CIT(A) erred in deleting penalty on the ground that a wrong claim which is not sustainable in the eyes of law will not become a base for concealment penalty. The Ld.DR further submitted that the assessee has furnished inaccurate particulars in respect of deduction claimed u/s 35D even though it is not eligible for deduction as the assessee had not commenced its business operations during the year under consideration. Though the assessee has withdrawn the claim by filing revised statement of total income, such withdrawal would not absolve the assessee from the penal provisions of section 271(1)(c). As the Hon'ble Delhi High Court in the case of CIT vs Zoom Communications P Ltd (2010) 191 Taxman.179 held that if an assessee makes a claim which is not only incorrect in law but also without any basis and explanation furnished by him for making such a claim not found to be bona fide, Explanation 1 to section 271(1)(c) would come into play and assessee will be liable to pay penalty u/s 271(1)(c).

5. On the other hand, the Ld.AR for the assessee supported order of the CIT(A).

6. We have heard both the parties and perused material available on record. The AO levied penalty u/s 271(1)(c) in respect of disallowance of deductions

claimed u/s 35D towards IPO expenses on the ground that the assessee has furnished inaccurate particulars of income which attracts penalty u/s 271(1)(c) of the Act. According to the AO, making a wrong claim in the return of income tantamount to furnishing of inaccurate particulars of income within the meaning of Explanation 1 to section 271(1)(c) of the Act. The AO further observed that by virtue of Explanation 1, if any amount has been added or disallowed in computing the total income, it is required to be held that the AO is satisfied that the assessee has concealed the particulars of income or furnishing inaccurate particulars of income as it is inherent in the explanation itself that the assessee has concealed the particulars of income or furnishing inaccurate particulars of income. It is the contention of the assessee that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars of income. It has disclosed all necessary facts and particulars in its books of account and no false statement has been made even in the return of income. It has withdrawn wrong claim made u/s 35D before the AO and also explained the reasons for making such claim. According to the assessee, it has made a wrong claim on the bona fide belief that it is eligible for 1/5th of deduction towards IPO expenses, even though it has not commenced business activities. However, on coming to know that it is not eligible for deduction during the current financial year, it has filed a revised statement of total income withdrawing its claim which shows the bona fideness and hence, the AO was incorrect in holding that the assessee has furnished inaccurate particulars of income which attracts penalty u/s 271(1)(c).

7. Having heard both the sides and considered material available on record, we find merit in the argument of the assessee for the reason that the Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts (P) Ltd (supra) held that 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 furnishing of inaccurate particulars. In this case, admittedly, the assessee has filed revised statement of total income withdrawing deduction claimed u/s 35D at the time of assessment proceedings. The assessee also explained the reasons for making such claim. Therefore, we are of the considered view that mere making a claim which is not sustainable in law cannot tantamount to furnishing of inaccurate particulars of income which would attract penalty u/s 271(1)(c). The CIT(A), after considering relevant submissions of the assessee and also by following the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts (P) Ltd (supra) deleted penalty levied by the AO. We do not find any error in the order of the CIT(A). Hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th December, 2017.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 29th December, 2017

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai