□य अ□धकरण, "ए" □यायपीठ, चे□नई
PELLATE TRIBUNAL 'A' BENCH, CHENNAI
□ी संजय अरोड़ा, लेखा सद□य एवं □ी धु□वु□ आर.एल रे□डी, □याि□यक सद□य के सम□
Before Shri Sanjay Arora, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I.T.A.No.69/Mds/2016**
□नधार्रण वष□/**Assessment Year:2002-03**

The Income Tax Officer, Non Corporate Ward 7(2), Room No. 606, 6th Floor, Wanaparthy Block, 121, M.G. Road, Chennai 600 034. Chennai 600 034.	Vs.	Shri Philip S Sakthivel, 1220, 20th Main Road, Anna Nagar, Chennai 600 040. **[PAN:AAIPS2091P]**
(अपीलाथ□ /Appellant)		**(□□यथ□/Respondent)**

अपीलाथ□ का□ ओर से / Appellant by	:	Shri A. Srinivasan, JCIT
□□यथ□ का□ ओर से/Respondent by	:	None
सुनवाई का□ तारा□ख/ Date of hearing	:	12.07.2017
घोषणा का□ तारा□ख /Date of Pronouncement	:	23.08.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the impugned appellate order of the ld. Commissioner of Income Tax (Appeals) 7, Chennai dated 12.11.2015 relevant to the assessment year 2002-03 with reference to the penalty order passed under section 271(1)(c) of the Income Tax Act, 1961 [ñActòin short] dated 19.09.2011.

2. Brief facts of the case are that the assessee is an individual engaged

ce. The Return of Income for the assessment year 2002-03 was filed on 31.3.2003, and the same was processed under section 143(1) of the Act on 18.9.2003. Thereafter the case was reopened under the provisions of section 147 of the Act by service of notice under section 148 of the Act on 24.03.2006. The reason for initiation of reassessment proceedings was that the assessee had been wrongly claimed deduction under section 80 HHC of the Act to the extent of ضي 1,33,67,899/-, and that information on the same was received from the Investigation Wing of the Department. The Assessing Officer completed the reassessment on 29.12.2006 by assessing income of ضي 1,33,67,889/- being the claim rejected under section 80 HHC of the Act and added back to the total income. The assessee preferred appeal against the quantum. The ld. CIT (A) in his order dated 30.11.2010 sustained the denial of claim under section 80 HHC of the Act and confirmed the quantum addition. On further appeal, the ITAT ' A' Bench Chennai, also found force in the denial of the claim under section 80 HHC of the Act and dismissed the appeal vide order dated 20.05.2011 in I.T.A. No. 71/Mds/2011. Following the ITAT's order accepting the rejection of claim under Section 80 HHC of the Act, the Assessing Officer initiated the penalty proceedings under section 271 (1) (c) of the Act and levied penalty of ضي40,64,057/- being 100% on the amount of income sought to be evaded vide his order dated 19.09.2011 under section 271 (1) (c) of the Act.

the matter in appeal before the ld. CIT(A) against levy of penalty. After considering the submissions of the assessee and by following the decision in the case of CIT v. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC), the ld. CIT(A) deleted the penalty.

4 On being aggrieved, the Revenue is in appeal before the Tribunal. The ld. DR has submitted that in the return of income, the assessee has furnished inaccurate particulars by making non-entitled claim of deduction warranting levy of penalty under section 271(1)(c) of the Act. Further, he submits that the case law relied on by the ld. CIT(A) is distinguishable and therefore, he prayed that the order of the ld. CIT(A) should be reversed.

5. Despite having noted the next date of hearing by making endorsement in the order sheet, when the appeal was on board for hearing on 22.05.2017, there was no representation from assessee's side or filed any adjournment petition. Pending adjudication of appeal from 29.02.2016 onwards, various adjournments were given at the request of the AR of the assessee and despite there was no petition for further adjournment from assessee's side, the Bench has directed to inform the parties by RPAD fixing the next date of hearing of appeal [RPAD on record]. However, since there was no representation from assessee's side and no petition for any adjournment was filed by the assessee, we proceeded to decide the appeal after hearing to the ld. DR and considering the materials available on record.

OR and considered the materials available on record. In this case, the assessee has claimed deduction under section 80HHC of the Act to the tune of ضي1,33,67,899/- for exporting rice in the name of M/s. NAFED and M/s. NAFED has also claimed the deduction under section 80HHC of the Act. M/s. NAFED also made it clear that it has not issued any Disclaimer Certificate to the assessee since the assessee has merely acted as NAFEDôs agent. It is an undisputed fact that the assessee has not made any export on its own name, but claimed deduction under section 80HHC of the Act. The abovesaid wrong claim of the assessee was brought to tax. On appeal, the ld. CIT(A) sustained the order of the Assessing Officer. On further appeal, vide order dated 20.05.2011 in I.T.A. No. 71/Mds/2011, the Tribunal also confirmed the order of the ld. CIT(A) by holding that the assessee could not have made a claim of deduction under section 80HHC of the Act in respect of the exports done by NAFED under an agreement entered into by them with a foreign buyer when all the related export documents were in the name of NAFED. The Tribunal further held that the assessee could not be called a supporting manufacturer when NAFED itself had claimed deduction under section 80HHC of the Act on the export of the same goods and never issued any disclaimer certificate as per sub-section (4A) of the Act. Since the final facts finding authority confirmed the assessment, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act and show-caused the

he assessee has not made any plea for withholding the penalty proceedings, but in his letter dated 25.07.2011, he has stated that against the order of the Tribunal, the assessee has been advised to file M.P. and thereafter, there was no response from assessee's side. By following the decision in the case of UOI v. Dharmendra Textile Processors Pvt. Ltd. 306 ITR 277 (SC), wherein it was held that it is not for the Revenue to prove the element of *mens rea* for the purpose of levying penalty under section 271(1)(c) of the Act, the Assessing Officer levied penalty. By following the decision in the case of CIT v. Reliance Petro Products Pvt. Ltd. (supra), wherein it was held that 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 ld. CIT(A) deleted the penalty levied under section 271(1)(c) of the Act.

6.1 The judgement of the Hon'ble Supreme Court in the case of CIT v. Reliance Petro Products Pvt. Ltd. (supra) has been delivered in the context that 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) of the Act and by reproducing the relevant section and more so, at para 8 of its order, the Hon'ble Supreme Court has given its observation, which is reproduced as under:

er:-

> *"271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-*
>
> *(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."*

8. A glance at this provision 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. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. 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 Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. 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. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:-

ut saying that for applicability of Section s stated therein must exist."

6.2 On careful perusal of the above judgement of the Hon'ble Supreme Court, it is clear from the facts that the stand of the Revenue was by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. Therefore, the Hon'ble Supreme Court was of the opinion that making an incorrect claim cannot *per se* in law tantamount to furnishing inaccurate particulars. Whereas, in the present case in hand, the assessee has claimed deduction under section 80HHC of the Act towards export turnover, as if he did the export on his own name. In this case, the assessee has done the exports in the name of M/s. NAFED. Moreover, all the export documents including the G R 1 Form were only in the name of M/s. NAFED. Even the agreement with the foreign buyer was made by M/s. NAFED and the Letter of Credit was opened by the foreign buyer in the name of M/s. NAFED. Further, the NAFED has not given any Disclaimer Certificate to the assessee so as to enable the assessee to claim the deduction under section 80HHC of the Act as per the provisions of sub-section (4A) of section 80HHC of the Act. Over and above, M/s. NAFED has claimed deduction under section 80HHC of the Act. Apparently, it is clear from the above facts that the assessee has deliberately claimed deduction under section 80HHC of the Act to the tune of ضي1,33,67,899/-, i.e., wrongly, by furnishing inaccurate particulars warranting the provisions of section

ore, the case law relied on by the ld. CIT(A) in the case of CIT v. Reliance Petro Products Pvt. Ltd. (supra) has no application to the facts of the present case.

7. With regard to furnishing of inaccurate particulars in the return of income by the assessee, the Revenue had solid evidence that before the Assessing Officer, the NAFED vide its letter dated 22.11.2006 clearly submitted that it had not only claimed deduction under section 80HHC of the Act on exports done by them through the assessee, but had also not issued any disclaimer certificate as specified in sub-section (4A) to section 80HHC of the Act. Thus, the assessee could not be called a supporting manufacturer when NAFED itself had claimed deduction under section 80HHC of the Act. Moreover, the Assessing Officer made it clear from the Profit and Loss Account of the assessee that the assessee had not admitted export turnover of ضي31,87,47,324/- in the Trading and Profit and Loss Account, instead, he has admitted the profit arrived on the exports done in the name of M/s. NAFED in the profit and loss account under the head Profit on Export A/C NAFED. *How could, one may ask, the same goods be exported out of India twice, i.e., once by the assessee and then by NAFED?* Therefore, the wrong claim made by the assessee was denied and the amount brought to tax, both by the ld. CIT(A) as well as the Tribunal, the final fact finding authority, holding that the assessee had made a wrong

of a false claim. Under the above facts and circumstances, we reverse the findings of the ld. CIT(A) and confirm the penalty levied under section 271(1)(c) of the Act by the Assessing Officer. Thus, the ground raised by the Revenue is allowed.

8. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on the 23rd August, 2017 at Chennai.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 23.08.2017

Vm/-

आदेश क□ □□त□ल□प अ□ेषित/Copy to: 1. अपीलाथ□/Appellant, 2.□□यथ□/Respondent, 3. आयकर आयु□त (अपील)/CIT(A), 4. आयकर आयु□त/CIT, 5. □वभागीय □□त□न□ध/DR & 6. गाड□फाईल/GF.