

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5474/Del/2016
Assessment Year : 2012-13**

ITO, Ward- 19(4), New Delhi.	Vs.	Permalite Electricals Pvt. Ltd., G-1, 118-119, First Floor, Phase-II, Maya Puri Industrial Area, New Delhi.
		PAN : AADCP2108E
(Appellant)		(Respondent)

Department by : Shri Atiq Ahmad, Sr.DR
Assessee by : None
Date of hearing : 26-12-2017
Date of pronouncement : 26-12-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 05.08.2016 of the CIT(A)-7, New Delhi relating to assessment year 2012-13.

2. Deletion of penalty of Rs.17,75,638/- levied by the Assessing Officer u/s 271(1)(c) of the I.T. Act is the only issue raised by the Revenue in the grounds of appeal.

3. Despite service of notice, none appeared on behalf of the assessee. Therefore, this appeal is being disposed off on the basis of material available on record and after hearing the ld. DR.

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading of electrical goods. However, no business activity was undertaken by the assessee company during the year as mentioned by the Assessing Officer in the assessment order. The assessee company filed its return of income declaring Nil income after adjusting brought forward business loss of Rs.1,83,778/- for assessment year 2010-11. During the course of assessment proceedings, the Assessing Officer made disallowance of Rs.53,500/- u/a 14A on the ground that the assessee has shown investment in share of Rs.1,07,00,000/- and has not attributed any expenditure relating to such investment, the income from which is exempt from tax. The explanation of the assessee that no exempt income was earned during the year was also rejected by the Assessing Officer. Similarly, the Assessing Officer made disallowance of Rs.56,87,056/- u/s 40(a)(ia) on the ground that no tax has been deducted from the interest paid on unsecured loan to M/s. Rallison Electricals Pvt. Ltd.. The Assessing Officer also made disallowance of Rs.34,122/- being interest paid on TDS which was claimed as an expenditure and another Rs.25,226/- out of conveyance, discount and rebate. The assessee did not file any appeal against the said order as per the grounds of appeal filed by the Revenue.

4.1 The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the I.T. Act. It was explained by the assessee that the penalty proceedings should be dropped as the assessee has made full and complete

disclosure of facts and there was no suppression of income. The decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts P. Ltd. reported in 322 ITR 158 was also brought to the notice of the Assessing Officer.

5. However, the Assessing Officer was not satisfied with the explanation given by the assessee and levied penalty of Rs.57,46,404/- u/s 271(1)(c) of the I.T. Act.

6. In appeal, the Id. CIT(A) deleted the penalty so levied by the Assessing Officer by observing as under :-

“4.2. I have carefully considered the penalty order and the written submissions furnished by the Ld. AR. The AO has levied the penalty u/s 271(1)(c) mechanically as he has mentioned in the order that the appellant had unexplained credit for which no evidence was furnished during assessment proceedings and to this extent the appellant had furnished inaccurate particulars of its income. However, while quantifying the penalty he has considered the disallowances made in the assessment order as noted in para 3 above. In the assessment order, there is no finding about any regarding unexplained cash credit alleged by the AO in the penalty order. Therefore, the AO is not clear about the items in respect of which the appellant has allegedly furnished inaccurate particulars. It is evident that penalty is levied with reference to certain disallowances only. Disallowance within the meaning of Section 40(a)(ia) is only a technical disallowance resulting from non-deduction of tax on interest of Rs.56,87,056/- paid to MIs Radisson Electrical (P) Ltd. on unsecured loan. The Ld. AR has also furnished certificate in Form 26A which shows that the said amount of interest is accounted for by the payee in its return of income. In any case disallowance u/s 40(a)(ia) cannot be treated as an item liable for penalty u/s 271(1)(c) as there is no element of concealment or furnishing of inaccurate particulars in the return with reference to the impugned transaction.

4.3. The other two items i.e. disallowance on interest TDS and disallowance of traveling & discount expenses with respect to which penalty is levied, are also in the nature of routine disallowance, particulars of which were disclosed in the return of income. It is not the case of the AO that any false claim is made in the return. Mere disallowance of claim/expenditure does not automatically qualify to be treated as furnishing of inaccurate particulars of income. In other words, mere fact that certain amounts claimed by the appellant have been disallowed and treated as income does not necessarily lead to the conclusion that the appellant is guilty of fraud or willful neglect.

4.4. The AO has invoked Explanation 1 to Section 271(1)(c) but has not to demonstrated as to how explanation offered by the appellant is found to be false or

not bonafide. All the relevant facts were available before the AO resulting in the impugned disallowances. It is not the case of the AO that there is any suppression of information or furnishing of inaccurate particulars with the intent to conceal income. These are critical prerequisites for invoking the rigors of penal proceedings within the meaning of section 271(1)(c) of the Act. In my considered view therefore, the nature of disallowances are not such so as to attract the rigors of the provisions of section 271(1)(c) of the I.T. Act.

4.5 *The Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd observed as under:*

"A glance at the provisions of section 271(1)(c) of the Income-tax Act, suggest that in order to be covered by it, 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. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate. the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his Income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

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). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

4.6. *In view of the judicial pronouncement referred above and the facts of the case, the appellant had given an explanation, which is bonafide. Therefore, there is no furnishing of inaccurate particulars of income or deliberate attempt to conceal income The rigors of the provisions of section 271(1)(c) are clearly not attracted in this case. In view thereof, the penalty levied u/s 271(1)(c) of the Act of Rs.17,75,638/- is cancelled. These grounds of appeal are ruled in favour of the appellant."*

7. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

8. We have heard the Id. DR and perused the material available on record.

We do not find any infirmity in the order of the Id. CIT(A) in deleting the

penalty levied by the Assessing Officer u/s 271(1)(c) of the I.T. Act. The finding given by the Id. CIT(A) that the assessee has furnished Form No.26A showing that the said amount of interest has been accounted for by the payee in its return of income could not be controverted by the Id. DR. In our opinion, there is no concealment of particulars of income by the assessee since it has duly declared the payment of such interest in the Profit & Loss Account and the penalty was levied only due to the disallowance on account of non-deduction of tax at source from the interest expenditure. We, therefore, do not find any infirmity in the order of the Id. CIT(A) deleting the penalty on such disallowance for non-deduction of tax. Even in respect of other two additions, we find these are routine disallowances. The disallowances are made on the basis of the details furnished by the assessee during the course of assessment proceedings. Mere disallowance of any claim or expenditure, in our opinion, does not automatically invite the provisions of section 271(1)(c) of the I.T. Act. The Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. (supra) has held that mere making of a claim which is not sustainable in law, by itself will not amount to furnish of inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing of inaccurate particulars. Since the Id. CIT(A) while deleting the penalty has relied on the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. (supra) and in absence of any contrary material brought

to our notice by the ld. DR against the order of the ld. CIT(A), we do not find any merit in the grounds raised by the Revenue challenging the order of the ld. CIT(A) in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the I.T. Act. The grounds raised by the Revenue are accordingly dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court at the time hearing itself i.e. on this 26th day of December, 2017.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 26-12-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi