

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'D', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 5552/Del./2014
Assessment Year: 2009-10**

VRV Foods Ltd., B-19, Sector-8, Noida (PAN-AAACV0448E). (Appellant)	vs.	D.C.I.T., Circle 17(1), New Delhi. (Respondent)
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Assessee by	Shri Subhodh Gupta, C.A.
Revenue by	Shri Amit Jain, Sr. DR

Date of Hearing	11.05.2018
Date of Pronouncement	05.06.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of ld. CIT(A)-19, New Delhi dated 08.07.2014 for the assessment year 2009-10 on the following grounds of appeal :

"1. The Lower Authorities have acted arbitrarily in levying penalty without any whisper of concealment of particulars or furnishing of inaccurate particulars of income and thus was unfounded , illegal, unjustified opposed to the principles of natural justice in total disregard to complete facts, circumstances and documents placed on record and thus impugned penalty order is liable to be quashed

2. The additions in returned income to the extent of voluntarily admission to mitigate litigation amounts to voluntary surrender and the decision of apex court in case of Suresh Chandra Mittal 251 ITR 9(SC) and Shadi Lal Sugar & General Mills 168 ITR 705(SC) should have been applied for non-levy of penalty.

3. On facts and circumstances of the case, lower authorities have erred and were not justified in levying penalty u/s 271(1)(c) of the Act on a disallowance of a claim sought to be verified during assessment proceedings and merely inability of appellant to produce complete documentary evidence at assessment stage, but subsequently duly explained during the penalty proceedings, does not make a case of a concealment of income nor furnishing of inaccurate particulars and thus penalty is liable to be quashed.

4. Lower Authorities have failed to prove mens rea or failure on the part of the assessee to disclose particulars of income in the manner, it was obliged to do under the act and thus no penalty is leviable and impugned penalty is liable to be deleted.”

2. All the above grounds challenge the penalty imposed u/s. 271(1)(c) of the IT Act. The brief facts of the case are that the appellant is engaged in the business of manufacturing, marketing of IMFL, country liquor and marketing of Vanaspati/edible oil. Return of income was filed by assessee declaring total income of Rs.4,51,21,152/-. The assessment was completed u/s. 143(3). In the assessment proceedings, the Assessing Officer observed that there was difference in creditors' balances with the books of account of the assessee in regard to four creditors amounting to Rs.5,28,605/-, which could not be reconciled by the assessee. The Assessing Officer further observed that there was also a difference of Rs.32,19,432/- in TDS/TCS which too could not be reconciled by assessee. The Assessing Officer, accordingly, added the above two amounts to the income of the assessee and initiated penalty proceedings u/s. 271(1)(c) of the Act. The detailed submissions made by assessee were rejected and penalty was imposed equal to 100% of the tax sought to be evaded on the above additions. In appeal, the Id. CIT(A) after considering the submissions of the assessee and relying on some case laws, confirmed the penalty so imposed by Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

3. The learned counsel for the assessee, reiterating the submissions made before the lower authorities, submitted that the difference in confirmed balances of Rs.5,28,605/- was due to clerical mistake, as there was no control of the assessee on the creditors. The Assessing Officer has accepted the transactions made with the creditors, but it was only the difference noted in the entries made by the creditors in their books, for which the assessee is not responsible. The addition was agreed by the assessee simply for the reason that there was no tax implication and it resulted in reduction of loss declared by the assessee. It is, however, submitted that the assessee had tried to reconcile the difference and the differences, which could not be reconciled due to non-cooperation by the creditors, were admitted by the assessee and offered for taxation. It was also submitted that the appellant has widespread operations with many geographical locations, the confirmation and period reconciliation with suppliers is always not possible. Sometimes, it happens that the creditors do not cooperate by furnishing their statement of account so that any clerical error could be rectified. The assessee has furnished complete explanation regarding the discrepancies before the Assessing Officer. This, however, would not constitute that the assessee had either concealed the particulars of income or furnished inaccurate particulars thereof.

4. With respect to alleged difference in TDS/TCS, it is submitted that the TDS claimed by the assessee has been accepted by the AO. The major addition of Rs.25,33,155/- pertained to one single party viz., United Spirits Ltd. However, in the compilation the TCS deducted by the United Spirits Ltd. under two different TAX for different supply points, were shown separately as purchases resulting into doubling of the same amount and this apparent different was verifiable from the relevant entries in the statement as per 26AS submitted by the assessee. He, therefore, submitted that the penalty imposed on this account for furnishing

inaccurate particulars of income is not tenable. The Id. Counsel for the assessee relied on various decisions for the proposition that under the bona fide of assessee in its voluntary agreement of errors, absence of intention to avoid any tax, no penalty can be imposed for concealment of income or for furnishing inaccurate particulars.

5. The Id. DR, on the other hand, relied on the orders of the authorities below and submitted that since the impugned differences pointed out by the Assessing Officer could not be reconciled, and that the assessee did not challenge the additions, the penalty imposed by Assessing Officer and sustained by Id. CIT(A) does not call for any interference.

6. We have considered the rival submissions and have gone through the entire material available on record and we find substance in the reasons assigned by the assessee for showing its agreement to some of the differences pointed out by the Assessing Officer. Once in the penalty proceedings, the assessee had tried to explain the differences in credit balances stating them to be clerical mistakes not open for rectification without cooperation from the creditors, it was open to the Assessing Officer to bring some material on record to rebut the contention of the assessee in the penalty proceedings before arriving at the conclusion that the assessee has concealed the particulars of income or has furnished inaccurate particulars of such income. More so, the Assessing Officer has accepted the transactions made from the creditors, in whose balances, the difference was pointed out. As held in several decisions, the findings in assessment order or admission to an addition, do not operate as res judicata in penalty proceedings. In the instant case, the penalty imposed is based merely on the additions and not on any fresh consideration to belie the explanations of the assessee given in the

penalty proceedings. The assessee had given creditor-wise justification of the alleged difference, but none of the authorities below have considered the same in penalty proceedings, rather they have acted only on the additions made in the assessment of assessee. So, in these circumstances, we do not find any justification to impose penalty against the assessee. We also do not find any material on record to controvert the explanation furnished by the assessee regarding alleged difference in TDS/TCS, which is stated to have been occurred due to TCS deducted by United Spirits Ltd. under the two different TAN for different supply points, resulting into doubt deduction of same amount. In view of these facts, we are of the opinion, that it is not a fit case to conclude concealment of particulars of income or furnishing of inaccurate particulars thereof, entailing penalty u/s. 271(1)(c) of the IT Act against the assessee. Accordingly, the appeal of the assessee deserves to be allowed.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 5th June, 2018.

Sd/-
(Bhavnes Saini)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 5th June, 2018

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi