

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SMT BEENA A. PILLAI, JUDICIAL MEMBER

ITA No. 1239/DEL/2009
[A.Y 1996-97]

M/s Taral Foods Limited
13, Hanuman Road
Connaught Place,
New Delhi

Vs.

The A.C.I.T
Circle - 16(1)
New Delhi

PAN : AAAC 0705 A

[Appellant]

[Respondent]

Date of Hearing : 04.07.2018
Date of Pronouncement : 05.07.2018

Assessee by : Smt. Premlata Bansal, Sr. Adv
Shri Divyanshu Agarwal, Adv

Revenue by : Shri Amit Jain, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax - XIX, New Delhi dated 04.02.2009 pertaining to A.Y 1996-97.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

3. The representatives of both the sides were heard at length. The case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the facts of the case are that the assessee filed Return of income on 29.11.1996 declaring loss of Rs. 8.61 crores. Assessment was completed u/s 143(3) of the Act vide order dated 15.3.1999 at a loss of Rs. 4.71 crores. Penalty proceedings were separately initiated u/s 271(1)(c) of the Act on reduction of returned loss to the assessed loss.

5. Following additions/disallowances were taken into account for levy of penalty:

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|----|--|-----------------|
| 1. | Addition on account of disallowance of stock written off | Rs. 2,82,25,963 |
| 2. | Addition on account of advance written off | Rs. 20,64,433 |
| 3. | Addition on account of IDBI shares written off | Rs. 3,25,000 |
| 4. | Addition on account of disallowance of royalty paid | Rs. 16,02,822 |
| 5. | Addition on account of disallowance of depreciation | Rs. 30,000 |
| 6. | Addition on account of disallowance of provision for bad debts | Rs. 78,855 |
| 7. | Addition on account of legal consultancy fee | Rs. 10,52,000 |

6. A perusal of the penalty order shows that the AO has considered the additions/disallowances but nowhere has he mentioned whether the assessee has filed inaccurate particulars of income or has concealed its particulars of income. Even in the assessment order the AO has made a passing remark "*Penalty u/s 271(1)(c) r.w. Explanation 1 thereto are initiated separately in respect of disallowances and additions made and to the extent returned income has not been substantiated*".

7. A perusal of the above observations in the assessment order clearly shows that it is neither here nor there. It is a settled proposition of law that while initiating penalty proceedings, the AO must make it clear whether he intends to levy penalty for filing

inaccurate particulars of income or for concealment of particulars of income.

8. Let us now consider the facts relating to the write off of inventory/stock. Exhibit 22 is the extract of stock details in the audited statement of accounts wherein it has been specifically mentioned written off/sorting loss in respect of peas and others. In its audit report, the auditors have specifically pointed out that the discrepancies noticed on verification between the physical stock and books records have been properly dealt with in the books of account. The company has written off stocks amounting to Rs. 2.82 crores which is considered unusable and not realisable by the management and thus destroyed during the year. The auditors have further remarked *“unserviceable or damaged stores, raw materials or finished goods are determined and provision for the loss wherever necessary, has been made in the accounts”*.

9. Exhibit 59 is the certified true copy of the minutes of the meeting of Board of Directors held on 12.01.1996 wherein it was resolved that *“frozen vegetables and fruits, which were lying unsold for more than one year which have deteriorated in quality can be*

destroyed in the presence of the Managing Director. Further resolved that the Managing Director is hereby authorised to identify and destroy the bad stock in consultation with the Production Manager.”

10. In so far as other write off/disallowances are concerned, the only reason given for levy of penalty is that the same has been confirmed by the first appellate authority and the assessee did not pursue the matter before the Tribunal. In our considered opinion, this cannot be a reason for levy of penalty because if the stand taken by the Revenue is accepted, then there is no need for having separate penal proceedings in the Income tax Act.

11. We find that complete disclosure about the write off of stock and other items have been made in the audited financial statement of accounts. Nothing was concealed from the Revenue. Though the AO has drawn support from Explanation 1 to section 271(1)(c) of the Act, but in the penalty order, the AO has not relied upon the same nor has he given any reference to Explanation 1 to section 271(1)(c) of the Act while levying penalty.

12. The Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd, 322 ITR 158, has observed and held as under:

"Therefore, it is obvious that it must be shown that the conditions under [Section 271\(1\)\(c\)](#) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed 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. In Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under [Section 271\(1\)\(c\)](#), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of [Section 271\(1\)](#) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding

as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* was upset. In *Union of India Vs. Dharamendra Textile Processors* (cited supra), after quoting from [Section 271](#) extensively and also considering [Section 271\(1\)\(c\)](#), the Court came to the conclusion that since [Section 271\(1\)\(c\)](#) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of [Section 271\(1\)\(c\)](#) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under [Section 276-C](#) of the Act. The basic reason why decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra) was overruled by this Court in *Union of India Vs. Dharamendra Textile Processors* (cited supra), was that according to this Court the effect and difference between [Section 271\(1\)\(c\)](#) and [Section 276-C](#) of the Act was lost sight of in case of *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra). However, it must be pointed out that in *Union of India Vs. Dharamendra Textile Processors* (cited supra), no fault was found with the reasoning in the decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra), where the Court explained the meaning of the terms "conceal" and "inaccurate".

It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under [Section 271\(1\)\(c\)](#) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled.

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under [Section 271\(1\)\(c\)](#) of the Act. 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."

13. The Hon'ble High Court of Delhi in the case of Principal CIT Vs. Control & Switchgear Contractors Ltd 377 ITR 215 has considered a similar issue and the relevant findings of the Hon'ble High Court read as under:

"Court finds that in the present case the order of the CIT(A) explaining why Section 271(l)(c) is not attracted in the facts and circumstances of the case merits no interference. The issue that arose for determination in the quantum appeal does appear to have been ^debatable as is evident from the above narration of facts. There was a reference made by the Assessee itself in the note of computation, that pursuant to the settlement agreement with Schneider, it had received compensation "in lieu of giving up their right under Press Note 18, which debarred the collaborator from carrying out business in India, without the permission of JV partners". The compensation was also "in lieu of agreeing not to use the name after an interim period i.e. to give up the benefit over a period of time of being known in the market as a joint venture partner of TE". Secondly, the Assessee armed itself with a legal opinion. These facts are sufficient to distinguish the present case from the facts in *Zoom Communication (supra)* where the Court observed that apart from a making wrong claim, the Assessee did so not on the basis of any advice given to it by an expert. Even in *MAK Data (supra)*, the Supreme Court held on facts that the Assessee there had no intention to declare its true income and no explanation was offered by it for the concealment of income. "

14. In the light of the aforesaid judicial decisions, we find that the assessee had fully disclosed all material facts in its audited financial statement of account filed with the return of income. Therefore, it cannot be said that the assessee has concealed any particulars of income nor it can be said that the assessee has shown inaccurate particulars of income. We, accordingly, set aside the findings of the CIT(A) and direct the AO to delete the penalty so levied.

15. In the result, the appeal of the assessee in ITA No. 1239/DEL/2009 is allowed.

The order is pronounced in the open court on 05.07.2018.

Sd/-

**[BEENA PILLAI]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 05th July, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr.PS/PS | |
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