

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI N.K SAINI, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 120/Del/2016
(ASSESSMENT YEAR-2011-12)**

M/s Replika Press Pvt. Limited., B-214, Ashok Vihar, Phase-I New Delhi-110052.	Vs.	DCIT Circle-15(1) New Delhi.
PAN No: AAACR1084L		
APPELLANT		RESPONDENT

Assessee by : Sh. K. Sampath, Adv. &
Sh. V. Rajkumar, Adv.
Revenue by : Sh. S.R. Senapati, Sr. DR

Date of Hearing : 19.06.2018.
Date of Pronouncement : 10/07/2018.

ORDER

PER: KULDIP SINGH, JM

The Appellant, M/s Replika Press Pvt. Ltd., New Delhi-110052
(hereinafter referred to as 'the Assessee') by filing the present appeal,

sought to set aside the impugned order dated 02.12.2015 passed by Ld. CIT(A)-7, New Delhi, on the grounds that:-

" On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 in holding the assessee guilty of furnishing inaccurate particulars of income with regard to claim for depreciation disallowed in the assessment. The action being arbitrary, erroneous, unjustified, untenable and unlawful must be quashed with directions for appropriate relief.

2. Briefly stated the facts necessary for adjudication of the controversy at hand are:- on the basis of completed assessment u/s 143(3) of the Income Tax Act, 1961 (for short the 'Act) at income of Rs. 62572560/- by making addition of Rs. 494230/- and Rs. 1563142/- on account of disallowance u/s 40A(3) and on account of excess depreciation claim, respectively, penalty proceedings u/s 271(1)(c) of the Act were initiated. Declining the contentions raised by the assessee, AO treated the mistake of claiming excess depreciation of Rs. 1563142/- as furnishing of 'inaccurate particulars of income' of Rs. 2057372/- and thereby levied a penalty of Rs. 699500/- u/s 271(1)(c) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal, who has deleted the penalty imposed by the AO qua addition of Rs. 494230/- on account of disallowance u/s 40A(3), however,

confirmed the penalty of Rs. 494230/- levied by the AO. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the penalty has been levied in this case, on account of excess depreciation of Rs. 1563142/- claimed by the assessee. It is also not in dispute that the disallowance of depreciation has been accepted by the assessee. It is also not in dispute that the assessee claimed bonafide mistake in making excess claim of depreciation.

6. In the backdrop of the aforesaid facts and circumstances of the case, argument addressed by the Ld. Authorized Representatives of the parties to the appeal, the sole question arises for determination in the case is:-

"as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of such income during assessment proceedings?"

7. Hon'ble Supreme Court in a case cited as **CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (S.C.)** while interpreting the provisions contained u/s 271(1)(c) of the Act, decided the identical issue in favor of the assessee. Operative part of which is reproduced for ready reference as under:-

"A glance at the provisions of section 271(1)(c) of the IT. Act, 1961 suggests 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 detail 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 would 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 inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. "

8. Bare perusal of the penalty order, apparently goes to prove, that there is no finding whatsoever on the part of the Revenue authorities below that any detail supplied by the assessee in his return of income is found to be incorrect and erroneous or false. In case, the assessee has claimed excess depreciation, it is for the tax authority to examine if the same is allowable or not.

9. Furthermore, perusal of the notice issued by the Assessing Officer to the assessee u/s 274 of the Act, available at page 79 of the Paper Book, goes to prove that even at the time of issuance of the notice as well as at the time of passing the penalty order, AO was not clear, "as to whether the penalty proceedings are being initiated for 'concealment of the particulars of income or furnishing inaccurate particulars of income', rather the assessee has been charged for having 'concealed the particulars of income as well as furnishing inaccurate particulars of such income: For ready perusal notice is extracted as under:-

**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE
INCOME TAX ACT, 1961****PAN-AAACR7619C****Deputy Commissioner of Income-Tax
Circle-15(1), New Delhi****Dated: 24.12.2013****To,****M/s Replika Press Pvt. Ltd.
B-214, Ashok Vihar,
Phase-I, Delhi-110052.**

Whereas in the course of proceedings before me for the assessment year 2011-12 it appears to me that you:-

*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....

***have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.**

You are hereby requested to appear before me at...11.00AM/PM on 27.01.2014 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).

Assessing Officer

Sd/-

(JANARDAN DAS)

Deputy Commissioner of Income-tax
Circle 15(1), New Delhi

(JARANDAN DAS)

Dy. Commissioner of Income Tax
Circle-15(1), New Delhi.

10. The identical issue has been decided by the Hon'ble High Court of Karnataka in the case of **Commissioner of Income-tax, Bangalore vs. SSA'S Emerald Meadows [2016] 73taxmann.com 241(Karnataka)** and has deleted the penalty by following the decision rendered by Division Bench of Hon'ble High Court of Karnataka in the case cited as **CIT vs. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxman.com 250(karn).**

11. Hon'ble Supreme Court of India upheld the decision rendered by Hon'ble High Court of Karnataka in the case of **SSA'S Emerald Meadows** (supra) by returning the following findings:-

" Section 274, read with section 271(1)(c), of the Income-tax Act, 1961-Penalty-Procedure for imposition of (conditions precedent)-Assessment Year 2009-10- Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty of proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income-High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination-whether since there was no merit in SLP filed by revenue, same was liable to be dismissed-Held, yes [para 2] [in favour of assessee]

12. In view of what has been discussed above, AO has failed to make out the case of 'concealment of income or furnishing of inaccurate particulars of such income' by the assessee, so as to attract the provisions contained u/s 271(1)(c) of the Act, hence penalty levied by the AO and confirmed by the Ld. CIT(A) is hereby ordered to be deleted. Consequently, present appeal filed by the assessee is allowed.

Order pronounced in the open court on 10/7/2018

Sd/-

(N.K SAINI)
ACCOUNTANT MEMBER

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 10.07.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	3/7/2018
Date on which the typed draft is placed before the dictating Member	9/7/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	10/7/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	10 /7/2018
Date on which the fair order comes back to the Sr. PS/PS	10/7/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

