

**IN THE INCOME TAX APPELLATE TRIBUNAL “D”, BENCH
KOLKATA
BEFORE SHRI S.S. GODARA, JM & DR. A.L.SAINI, AM**

**ITA No.1325/Kol/2017
(A.Y: 2010-11)**

A.C.I.T. (International Taxation), Circle-1 (2), Kolkata	Vs.	M/s Joy Partnership Mining Centre
Room No-206, 2 nd Floor, Aayakar Bhawan Poorva, 110, Shanti Pally, Kolkata-7000107.		85/1 Topsia Road, (South) Kolkata-700046
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFJ 6427 H		
(अपीलार्थी /Assessee)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri G.Hangshing, CIT
Respondent by : Shri Amit Kumar Lal, AR

सुनवाई की तारीख / Date of Hearing : 07/06/2018
घोषणा की तारीख/Date of Pronouncement: 29/08/2018

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-22, Kolkata in Appeal No..168/CIT(A)-22/10-11/14-15/Kol dated 15.03.2017 which in turn arises out of penalty order passed by the Deputy Director of Income Tax(International Taxation)-1(1), Kolkata under section 271(1)(c) of the Income Tax Act, 1961 (in short, ‘the Act’), dated 30.09.2014.

2. Grounds of appeal raised by the Revenue are as follows :-

“(1) Whether, in the facts and circumstances of the case, the Ld CIT (A) erred in deleting the penalty of Rs 2,50,00,000/- for the assessment year 2010-11?

(2) Whether, in the facts and circumstances of the case, the Ld CIT(A) erred in deleting the penalty of Rs. 2,50,00,000/- without appreciating that the assessee did not report its income correctly and revised the income only upon receipt of scrutiny notice and is therefore, liable to penalty u/s 271 (1)(c)?

(3) Whether the Ld CIT erred in giving relief to the assessee placing reliance on Pricewater Cooper House reported in 3481TR306 without appreciating the factual difference between the two cases?

(4) Whether the Ld CIT erred in disregarding the reliance of the AO on the case of MAK data 3581TR593 (SC) and Dharmendra Textiles Ltd 306 ITR 277 (SC) while the above decisions are squarely applicable in this case?

(5) The assessee craves leave to add, add or amend, alter, modify or rescind any of the grounds hereinabove before or at the time of hearing of the appeal.”

3. The brief facts qua the issue are that the assessee is a non-resident partnership firm formed in the United Kingdom. Through its Project Office in India, it provides various technical services relating to mining operations in India to different Indian entities. For the financial year ended 31st March, 2010, relevant to the AY 2010-11, the assessee electronically filed its return of income belatedly on 31st March, 2011 declaring total income for the year at Rs.2,46,45,525/-. The assessee obtained the tax audit report for the year only on 31st March, 2011 i.e. on the date it filed its return of income as stated above. Since there was delay in obtaining the tax audit report, the assessee also made payment of Rs.1,00,000/- towards penalty u/s. 271B of the Income-tax Act 1961 (the 'Act') suo moto on 31st March, 2011 i.e. the day on which the return for the year was filed itself.

The assessee subsequently discovered that in the return filed, it omitted to consider an amount as disallowable based on Form No. 3CD obtained by it on 31st March, 2011 i.e. the very day on which the return for the year was filed belatedly as stated above. Since, a return filed u/s. 139(5) of the Act cannot be legally revised, the assessee on its own filed a letter with the Assessing Officer on 3rd January, 2012 requesting him to consider the total Income for the year at Rs.10,50,38,346/- instead of Rs.2,46,45,525/- declared in the return filed as stated above. The assessee also paid tax and applicable interest on the differential amount of Rs.8,03,92,821/- [Rs. 10, 50,38, 346 - Rs.2,46,45,525] aggregating to Rs.2,75,86,200/-.

The Assessing Officer subsequently passed an order dated 11th March, 2013 u/s. 143(3) of the Act wherein she disallowed bad debt written off of Rs.31,942. However, in the said order the Assessing Officer inadvertently through oversight did not refer to the above letter dated 3rd January, 2012 wherein the assessee offered to tax the above amount of Rs.8,03,92,821/- and computed the total income for the year at Rs.10,50,38,346/-. Instead, in the said order, the Assessing Officer considered the total income for the year under consideration at the returned figure of Rs.2,46,45,525/- and after adding the amount of bad debt disallowed as above of Rs.31,942/-, determined the assessed income for the year at Rs.2,46,77,467/-. Since she failed to consider the letter of 3rd January, 2012 altogether while passing the assessment order through oversight, she also omitted to consider and allow credit for the tax and interest of Rs. 2,75,86,200/- which was paid by the assessee in the Month of December, 2011 and the copy of challan was enclosed with the said letter of 3rd January, 2012. It would clearly transpire from the above facts on record that the Assessing Officer did not consider the aforesaid letter of 3rd January, 2012 through oversight while completing the assessment by the order u/s. 143(3) of the Act.

4. Subsequently, on 6th January, 2014 a notice was issued u/s. 263 of the Act by Learned Director of International Tax (DIT) to take into account the income of Rs. 10,50,38,346/- declared by the assessee in its letter dated 3rd January, 2012. The said fact is also clearly noted in the said notice dated 6th January, 2014 issued u/s. 263 of the Act by the learned DIT, International Taxation, Kolkata. The Learned DIT passed order u/s 263 of the Act on 27th January, 2014 directing the Assessing Officer to complete the assessment denovo considering the letter dated 03rd January, 2012 filed by the assessee. While passing such order, the Learned DIT again observed that reason for initiating proceedings u/s 263 was letter dated 03rd January, 2012, suo moto filed by the assessee. The relevant extract of Learned DIT order is quoted below:

"Reason for this notice

3. The assessee vide letter dated 03.01.2012 intimated to the AO that the return income should be read as Rs.10,50,38,346/- instead of Rs.2,46,45,525; but the

AO omitted the submission. Therefore, there has been under-assessed of Rs. 8,03,92,821 "

5. Thereafter, the Assessing Officer initiated proceedings pursuant to order u/s 263 of Learned DIT and issued notices u/s 143(2) and 142(1) of the Act. All the details/information required by the Assessing Officer were duly furnished to the Assessing Officer again. The assessee also furnished details/working relating to income as per Profit and Loss A/c and income arrived by the assessee by way of letter dated 03rd January, 2012 as required by the Assessing Officer. No further details were required relating to income declared by the assessee vide letter dated 03rd January, 2012 and the Assessing Officer was duly satisfied with explanation of the assessee. The Assessing Officer perused all details/ information furnished during proceedings initiated pursuant to order u/s 263 and also details/ Information already available on record pursuant to original assessment proceedings again. After pursuing such details/ information, the Assessing Officer passed order dated 26th March, 2014 u/s. 143(3) r. w.s. 263 of the Act determining the assessed income of the assessee at Rs.10,50,70,288/- considering the total income of Rs.10,50,38,346/- declared by the assessee itself in the said letter dated 3rd January, 2012 and the disallowance of Rs.31,942 on account of bad debt written off. Though the Assessing Officer considered income as declared by the assessee as above. The Assessing Officer however initiated penalty proceedings u/s 271(1)(c) of the Act in the said order dated 26th March, 2014, passed u/s. 143(3)/263 of the Act.

6. In the course of the proceedings u/s. 271(1)(c) of the Act, the assessee explained the above facts to the Assessing Officer and inter-alia clarified that since the income has been offered to tax by the assessee suo moto and voluntarily, there cannot be any question of concealment of particulars of Income or furnishing Inaccurate particulars of such income so as to come under the mischief of section 271(1)(c) of the Act. The assessee thus explained in detail before the Assessing Officer that there cannot be any case for levying penalty u/s 271(1)(c) of the Act given the facts of its case and the position in law in this regard. The Assessing Officer, however, without appreciating the facts of the case

of the assessee passed an order dated 30th September, 2014 imposing penalty 271(1)(c) of the Act read with Explanation 1 thereof at Rs. 2,50,00,000/-.

7. On appeal by the assessee, the Id. CIT(A) deleted the addition. The Id CIT(A) noted that assessee has suo moto disclosed the additional income by way of a letter dated 3rd January, 2012. The fact that 'omission' emanates on the part of the Ld AO, and for no reason is attributable to the assessee is also glaring from the notice and order passed by the Hon'ble CIT u/s. 263 of the IT Act wherein he has categorically mentioned that the Ld. AO has omitted to consider the said letter of 3rd January, 2012. Therefore, Id CIT(A) noted that the omission to consider the revised computation and tax paid thereon by the assessee, being clearly apparent from the records, could have been a subject matter of a rectification also by the Ld AO, either on his own volition or on a request by the taxpayer. Furthermore, Id CIT(A) noted that the returns filed by the assessee had been routinely subjected to scrutiny assessment year after year without exception. There cannot be any plausible reason for the assessee to hold back the revised computation till its return filed is selected for scrutiny assessment. It is also a matter of record that the notice u/s. 142(1) was issued by the Assessing Officer much after the letter along with revised computation was filed by the assessee with him on 3rd January, 2012. Considering these facts, Id CIT(A) deleted the penalty U/s 271(1) (c) of the Act of Rs.2,50,00,000/-.

8. Aggrieved by the order of the Id. CIT(A) the Revenue is in appeal before us. The Id. DR for the revenue has primarily reiterated the stand taken by the AO which we have already noted in our above para and is not being repeated for the sake of brevity. On the other hand, the Id. Counsel for the assessee relied on the order passed by the Id. CIT(A) and defended the order passed by him.

9. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee's case under consideration is neither fall in the category of 'concealment of particulars of income' nor in the category of 'furnishing inaccurate particulars of income'. We note that the

assessee has filed the belated return for A.Y.2010-11 on 31.03.2011. The assessee came to know the apparent mistake and therefore, since the belated return cannot be revised and hence he filed a letter before the Id AO on 03.01.2012 requesting him to consider the total income for the year at Rs.10,50,38,346/- instead of Rs.2,46,45,525/- declared in the return filed as stated in the belated return. The assessee also paid tax suo moto and also paid the applicable interest on the differential amount of Rs.8,03,92,821/- (Rs.10,50,38,546 – 2,46,45,525) aggregating to Rs.2,75,86,200/- and in the said letter the assessee enclosed a challan counterfoil for the proof of payment of income tax and interest. Therefore, this fact clearly shows that the assessing officer has not detected any concealment or inaccurate particulars of income in the assessee's books. This is the fact that the assessee has suo moto declared the additional income and paid interest and tax thereon and therefore this cannot be treated as 'concealment' or 'furnishing inaccurate particulars of income'.

10. We note that in the assessee's case under consideration, the original return was not filed within time and the assessee could not file a revised return, and therefore had to resort to intimate the Ld. AO by way of a letter which was also filed much within the period of limitation for filing a revised return for the subject year. It is also a matter of record that in the course of the assessment proceedings not once, but as it appears, at least on two occasions the assessee drew attention of the Ld. AO to the said revised computation of income. However, the Ld. AO while passing the assessment order u/s. 143(3) of the IT Act completely missed out to consider the revised income as also missed out to allow credit in respect of the taxes of Rs.2,75,86,020/- deposited by the assessee along with the revised computation. The fact that such 'omission' emanates on the part of the Ld AO and for no reason is attributable to the assessee is also glaring from the notice and order passed by the Hon'ble Director of Income Tax (IT) u/s. 263 of the IT Act, wherein he has categorically mentioned that the Ld. AO has omitted to consider the said letter of 3rd January, 2012. We are of the view, that the 'omission' to consider the revised computation and tax paid thereon by the assessee, being clearly apparent from the records, could have been a subject

matter of a rectification under section 154 of the Act, also by the Ld AO, either on his own volition or on a request by the taxpayer. The returns filed by the assessee had been routinely subjected to scrutiny assessment year after year without exception. It should also be noted that the notice u/s. 142(1) was issued by the Assessing Officer much after the letter along with revised computation was filed by the assessee with him on 3rd January, 2012.

11. We note that subsequently, the ld. Director of Income Tax (International Taxation) Kolkata, has exercised his jurisdiction u/s 263 of the Act, on 27.01.2014, to review the order of the assessing officer. In the order u/s 263 the ld. Director of Income Tax (International Taxation) directed the ld AO to complete the assessment *de novo* considering the letter submitted by the assessee on 03.01.2012. The ld. Director of Income Tax (International Taxation), while exercising his jurisdiction u/s 263 of the Act has noted reasons which were in the letter dated 03.01.2012 filed by the assessee suo moto declaring the additional income and paid interest and tax thereon. We note that in the assessee's case it was just an omission by not considering the amount of Rs. 8,03,92,821/- as explained above and accordingly a letter was filed before the ld AO, declaring the correct particulars of its income. Such declaration by the assessee suo moto cannot be considered that assessee has concealed particulars of income. Therefore it seems to us that there is neither 'concealment of particulars of income' nor 'furnishing of inaccurate particulars of income'. We note that the assessee filed belated return and the belated return cannot be revised and therefore the assessee had no other option but to revise its return of income by filing a letter and that letter has also been filed before 31st March, 2012 i.e. time limit within which the assessee could revise the return of income provided the assessee had not filed belated return. Since technically assessee did not have option to revise the return, (that is, belated return can not be revised) therefore the assessee paid tax and interest on additional income and intimated the ld AO to consider the revised income of the assessee on 03.01.2012 within the time permissible to file revised return i.e. 31st March, 2012. We note in the case of CIT vs Somany

Evergreen Knits Ltd. [2013] 352 ITR 592 the Hon'ble Bombay High Court observed as follows :

"The grievance of the revenue is that the mistake ought to have been rectified by filing a revised return of income, Tribunal held that the time to file a revised return had expired. In any event, it was not disputed that it was a bona fide mistake on the part of the respondent-assessee. In that view of the matter, imposition of penalty was not warranted."

We also note that the Hon'ble Supreme Court in the case of PricewaterhouseCoopers P.Ltd vs CIT [2012] 348 ITR 306 has held that no penalty could be levied in case the assessee had not mistakenly furnished inaccurate particulars of income. The Hon'ble Supreme Court in this case held as follows :

"It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the Inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care in a case such as the present does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income. "

Therefore, considering the precedents cited above, we note that in the assessee's case under consideration there was inadvertent error and the assessee should not be penalized, therefore, considering, the facts and circumstances as discussed above, we cancel the penalty order and confirm the order of ld CIT(A).

12. In the result the appeal by the Revenue is dismissed.

Order pronounced in the court on 29.08.2018.

Sd/-
 (S.S.GODARA)

न्यायिक सदस्य / Judicial Member

कोलकाता /Kolkata;

Dated:
 RG, SPS

Sd/-
 (DR. A. L. Saini)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee- ACIT(IT)Circle-1(2)
2. प्रत्यर्थी / The Respondent.- M/s Joy Partnership Mining Centre
3. आयकर आयुक्त(अपील) / The CIT(A)-22, Kolkata.
4. आयकर आयुक्त / CIT-(IT&TP), Kolkata.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता**
/ DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.