

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Abraham P. George, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 1988/Chny/2014  
निर्धारण वर्ष/Assessment Year:2007-08

The Deputy Commissioner of  
Income Tax, Company Circle II(3),  
Room No. 513, 5<sup>th</sup> Floor, New Block  
121, M.G. Road, Chennai 600 034.

M/s. Jai Bhawani Steel Enterprises  
Vs. Limited,  
Shri Pramod Kumar Saraf, 11/A,  
Jatindra Mohan Avenue, 4<sup>th</sup> Floor,  
Kolkata 700 006.

[PAN:AABCJ5906C]

(Appellant)

(Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri R. Clement Ramesh Kumar, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by	:	None
सुनवाई की तारीख/ Date of hearing	:	03.12.2018
घोषणा की तारीख /Date of Pronouncement	:	02.01.2019

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) II, Chennai dated 27.01.2014 relevant to the assessment year 2007-08 passed under section 271(1)(c) of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee filed its return of income on 15.11.2007 declaring a loss of ₹.1,04,95,320/- and the case was selected

for scrutiny. While completing the assessment under section 143(3) of the Act, the Assessing Officer assessed the income of the assessee at ₹.22,18,497/- by adding back a sum of ₹.1,27,13,817/- under section 41(1) of the Act. By considering the addition as concealment and furnishing of inaccurate particulars of income, the Assessing Officer levied penalty of ₹.42,79,470/- under section 271(1)(c) of the Act. On appeal against penalty order, after considering the submissions and facts of the case, the Id. CIT(A) deleted the penalty levied under section 271(1)(c) of the Act, against which, the Revenue is in appeal before the Tribunal.

3. Before us, by referring to the grounds of appeal, the Id. DR has submitted that on verification of the accounts of the creditor M/s. The India Cements Ltd., the outstanding was shown as "Nil", whereas, the assessee has claimed an amount of ₹.127.13 lakhs as outstanding to the creditor. With regard to this discrepancy, the assessee has not offered any explanation and thus, the Id. DR pleaded for reversing the appellate order.

4. The notice issued to the assessee has been returned "unserved". The Department also deputed the Income Tax Inspector to serve the notice in person. However, since, the assessee did not exist at the given address, the Department send the notice through e-mail, which was delivered. However, the assessee has not appeared. Since the appeal is pending for adjudication

from 2014, we proceeded to decide the appeal on merits after considering the submissions of the assessee.

5. We have heard the Id. DR, considered the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings the Assessing Officer noticed that the assessee claimed a liability of ₹.1,27,13,817/- under the head 'sundry creditors for supplies' in the name of M/s. India cements Ltd as an 'outstanding amount payable'. As per the assessee, this amount represents the outstanding balance payable to M/s. India Cements Ltd on account of purchases made in the earlier years. On cross verification with M/s. India Cements Ltd, the Assessing Officer noticed that there was no such amount shown by M/s. India Cements Ltd as 'receivable' from the assessee. As the assessee failed to offer any satisfactory explanations, the Assessing Officer treated the above liability shown by the assessee as a liability ceased to exist and accordingly brought to tax as the income of the year under section 41(1) of the Act. During the course of penalty proceedings, after considering the submissions of the assessee and by considering the additions as concealment and furnishing of inaccurate particulars of income, the Assessing levied penalty under section 271(1)(c) of the Act.

6. Against levy of penalty, before the Id. CIT(A), the assessee has submitted that it had been doing business with India Cements Ltd in the

earlier years by buying cement. During the course of this business, there were regular purchases and the same were credited to the account of India Cements Ltd. Subsequently, the assessee stopped purchase of cement from India Cements Ltd and there were several unreconciled differences. In addition, some of the payments made to India Cements Ltd were separately shown in a different account and the same was shown in the sundry debtors list. As the business with India Cements was stopped, the assessee could not get proper account from India Cements and hence reconciliation was not carried out properly. The assessee also stated that since the business was closed subsequently and there were substantial losses (both current year losses as well as brought forward losses) which are going to be lapsed, the assessee decided to close the matter by accepting the addition proposed by the Assessing Officer as further efforts to reconcile and proving the facts is only a futile exercise as it will not serve any purpose. Therefore the assessee claimed that there was no concealment of income/furnishing of inaccurate particulars in its case for the purpose of levying penalty under section 271(I)(c) of the Act.

7. After considering the submissions of the assessee, the Id. CIT(A) has observed that the Assessing Officer has not examined the fact that there were certain debit balance outstanding against M/s. India Cements Ltd. (on the assets side of the balance sheet). The Id. CIT(A) further observed that

the outstanding balances are coming from the earlier years i.e., the transactions, during the course of which the above credit balances of ₹.1,27,13,817/- have resulted and outstanding at the beginning of the current year, pertain to the financial years prior to the financial year 2006-07. Therefore, the Id. CIT(A) was of the opinion that if the transactions are to be considered as concealment of income or furnishing of inaccurate particulars for the purpose of levying penalty under section 271(1)(c) of the Act, it should be in the year(s) in which the transactions have been effected. Once the transactions are accepted by the revenue in the earlier years and resulting effects in the subsequent years will not amount to concealment of income or furnishing of inaccurate particulars under section 271(1)(c) of the Act, which means that in the case of unexplained credits, investments etc., the amounts can be brought to tax only in the year in which they were introduced/made. No action can be taken in the subsequent years. Similarly, if the claim of the assessee (on account of purchases etc., which were debited to the P&L account in the earlier years) is found to be false, the disallowance is to be made in the concerned years. Cessation of liabilities under section 41(1) of the Act will come into picture only when the assessee claimed certain amounts as expenses in the earlier years and the same was also allowed by the revenue. In other words, the claims of the assessee were considered as genuine in the earlier years and in such a case no concealment or furnishing of inaccurate particulars can be presumed.

8. Further, in the instant case, it was the inability to reconcile the liabilities and prove the same. Also, as the assessee has closed down its business and there were sufficient losses to absorb the assessment of cessation of liabilities under section 41(1) of the Act, the assessee has not taken pains to reconcile the differences in the credit balances with M/s. India Cements Ltd and accepted the addition proposed/made by the Assessing Officer. Such admissions or surrender of claims etc. will not automatically lead to concealment of income or furnishing of inaccurate particulars for the purpose of levying penalty under section 271(1)(c) of the Act. We also observed that if the claims made by the assessee are not genuine or suppressed/inflated or fabricated or malafide etc., the additions/disallowances or withdrawal of claims etc. will amount to concealment of income or furnishing of inaccurate particulars for the purpose of section 271(1)(c) of the Act. Similarly, if the transactions shown by the assessee in its return of income is genuine and all the particulars of it are available in the return, mere withdrawal of the claim or not appealing against the assessment by the assessee, will not amount to concealment of income or furnishing of inaccurate particulars. In view of the above facts and circumstances, we are of the considered opinion that the Id. CIT(A) has rightly deleted the penalty levied under section 271(1)(c) of the Act. Thus, the ground raised by the Revenue stands dismissed.

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

Order pronounced on the 02<sup>nd</sup> January, 2019 at Chennai.

Sd/-  
(ABRAHAM P. GEORGE)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 02.01.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT,  
5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.