

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD BENCH 'D', AHMEDABAD**

**[Coram: Justice P P Bhatt, President, and Pramod Kumar, Vice President]**

ITA No. 159/Ahd/2015  
Assessment year: 2010-11

**Contemporary Target Private Limited** .....**Appellant**  
*20-21, Gandhi Oil Mill Compound,  
Gorwa Industrial Estate,  
Gorwa, Baroda-390020  
[PAN : AACCC 4410 H]*

**Vs**

**The Deputy Commissioner of Income-tax** .....**Respondent**  
*Circle-1(1), Baroda*

**Appearances by**

**Urvashi Shodhan**, *for the appellant*  
**Lalit P Jain**, *for the respondent*

Date of concluding the hearing : 06.12.2018  
Date of pronouncement : 04.03.2019

**O R D E R**

**Per Pramod Kumar, Vice President:**

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 22<sup>nd</sup> October 2014 passed by the by the CIT(A)-I, Baroda in the matter of penalty under Section 271(1)(c) of the Act for the Assessment Year 2010-11.

2. Grievances raised by the appellant are as follows:-

*“(1) The Learned CIT (A) has erred in law and on facts in confirming penalty levied by the Assessing Officer of Rs. 10,10,000/- on part disallowance of the claim u/s 80IC and disallowance of interest expense relating to capital work in progress.*

*(2) The claim of deduction u/s 80IC of the Act of Rs.9,79,626/- is based on the audit report u/s 80IC of the Act and as such the deduction is certified by the Tax auditor. Moreover, the reduction of Rs. 9,79,626/- from the amount claimed u/s 80IC of the Act is not because of furnishing of inaccurate particulars in the facts and circumstances of the case on the part of the*

assessee but the same is the result of difference of opinion on the part of department vis a vis the assessee.

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 and such claim made in the return of income cannot amount to the inaccurate particulars as held by the Hon. Supreme Court in the case of C.I.T. v/s. Reliance Petroproducts Pvt. Ltd. reported at 322 ITR 158. As the relevant claim has been made in the return of income and the basic facts regarding claim is available in the return of income the part disallowance of the same cannot lead to penalty u/s 271(1)(c) of the Act as held in the decision of the Rajasthan High Court in the case of Chandrapal Bagga v/s. ITAT reported at 261 ITR 67 and CIT v/s. Atul Mohan Bindal reported at 317 ITR 1 (S.C.)

(3) As regards disallowance of interest expense of Rs.19,86,056/- relating to capital work in progress, there is no case for penalty u/s 271(1)(c) of the Act as the issue of a particular expenditure being capital or revenue is a matter of constant litigation between the assessee and the department. There are hundreds of case laws of Tribunal, High Courts etc. favoring the assessee and if an assessee claim a deduction based on the judicial opinion expressed in number of cases, he cannot be said to have concealed the income or furnish inaccurate particulars of income which attracts penalty u/s 271(1)(c) of the Act.”

3. Learned representatives fairly agree that whatever we decide in ITA No.158/Ahd/2015, i.e. assessee’s appeal on the same issue for the assessment year 2009-10 which was heard alongwith this appeal, will apply *mutatis mutandis* in this assessment year as well.

4. Vide our order of even date, in assessee’s appeal for the assessment year 2009-10, we have, *inter alia*, observed as follows:-

“3. The assessee before us is engaged in manufacturing and sales of toothbrushes. The assessee has a unit in Uttarakhand (Haridwar) in respect of which the assessee has claimed deduction of Rs.1,49,94,325/- under section 80IC of the Income Tax Act. During the course of scrutiny assessment proceedings, when this claim was subjected to verification, the Assessing Officer noticed that the remuneration of Rs.30.56 lakhs was paid to the directors, but no part of the same was allocated to Uttarakhand operations. The plea of the assessee that these persons are not directly dealing with the operations of the said unit, but their activities are confined to Baroda unit did not find favour with the Assessing Officer. The plea of the assessee that two of these directors, namely Anirban Bose and SP Roy, are primarily employees dealing with Baroda Unit, and have been taken on the Board of Directors only as a matter of convenience, was simply noted and rejected. The Assessing Officer thus proceeded to allocate these expenses on the basis of turnover and resultantly reduced the deduction under section 80IC by Rs.14,40,670. There was also a disallowance of Rs.20,45,687/- on

account of interest which ought to have been capitalized as it pertained to the work in progress. The matter, however, did not rest there. The Assessing Officer also imposed penalty under section 271(1)(c) for concealment of income. It was held that the assessee had concealed income on account of and through these incorrect claims. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and considered facts of the case in the light of the applicable legal position.

5. It is by now well settled in law that merely making an incorrect claim by itself cannot be visited by penal consequences under section 271(1)(c). Hon'ble Supreme Court, in the case of CIT vs. Reliance Petroproducts Pvt Ltd (322 ITR 158), has held so. In the present case, the assessee has made claim under section 80IC based on allocation of directors' expenses on the basis of presence in the unit and direct attention thereto – which was duly certified as correct by a Chartered Accountant. This claim being incorrect is one thing but it cannot, for that reason alone, said to be deliberate concealment of income. There is a reasonable explanation for the claim, and, in the light of the same, it was not a fit case for penalty. Similarly, capitalization of interest on the work in progress, all that has been put against the assessee is that on his own. The assessee agreed, in response to the Assessing Officer's suggestion, capitalization of this interest. There is no dispute about bonafides of interest expenditure, nor is it even allegation of the authorities below that the issue regarding capitalization of such interest was beyond any doubt or controversy. The explanation for the action of claiming the deduction has not thus been rejected and held to be devoid of any merits at all. In any case, the treatment of capital expenditure vs. revenue expenditure has been all along a grey area and subject matter of intense legislation. The assessee has been gracious in allowing the matter to reach finality and not litigating on the claim. In view of these discussions and bearing in mind entirety of the case, we are of the considered view that it was indeed not a fit case for imposition of penalty under section 271(1)(c). There is nothing more than incorrect claim, but that lapse, as we have noted earlier, cannot by itself be reason enough to impose the penalty under section 271(1)(c) for concealment of income.

6. We, therefore, vacate the orders of the authorities below and delete the impugned penalty of Rs.11,10,000/-. The assessee gets the relief accordingly.”

5. We see no reasons to take any other view of the matter in this year than the view so taken by us.

6. Respectfully following the above order, we delete the impugned penalty of Rs.10,10,000/- imposed under section 271(1)(c). The assessee gets the relief accordingly.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 4<sup>th</sup> day of March, 2019.

Sd/-

Sd/-

**Justice P P Bhatt**  
(President)

**Pramod Kumar**  
(Vice President)

**Ahmedabad, dated the 4<sup>th</sup> day of March, 2019**

*cc*

Copies to:                   (1)    *The appellant*                   (2)    *The respondent*  
                                  (3)    *CIT*                                       (4)    *CIT(A)*  
                                  (5)    *DR*                                       (6)    *Guard File*

*By order etc*

*True Copy*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*