

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE HON'BLE SHRI G. D. AGRAWAL, PRESIDENT
AND
HON'BLE SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No. 2789/DEL/2016 (A.Y 2009-10)

Puran Associates Pvt. Ltd., 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi PAN-AAACP0458J (APPELLANT)	Vs	ACIT, Circle-20(1), New Delhi (RESPONDENT)
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Appellant by	Shri. M.P. Rastogi, Adv
Respondent by	Ms. Nidhi Srivastava, CIT DR

Date of Hearing	29.04.2019
Date of Pronouncement	30.04.2019

ORDER

PER G.D. AGRAWAL, V.P.

This is an appeal filed by the assessee against the order dated 29.02.2016 passed by the CIT(A)-7, New Delhi.

2. At the time of hearing before us, it is stated by the learned counsel that the appellant company entered into an agreement with M/s Fresenskabi (Singapore) Pvt. Ltd., for the sale of Rs. 2,44,24,377/- shares of M/s Dabur Pharma Ltd., for a total consideration of Rs. 186,84,64,840/-. It has simultaneously entered into an escrow agreement in relation to the completion of sale transaction. That as per sale agreement of shares, the assessee i.e. seller is to indemnify the purchaser about the outstanding tax or additional tax liability of the company because it will ultimately reduce the value of shares.

3. Keeping in view such an indemnity clause, the escrow agreement makes eligible the escrow agent which is the ABN Amro Bank, to deduct a part of sale

consideration as deferred purchase consideration. In view of the above agreement escrow agent retained a sum of Rs. 14.40 Crore and only 172 Crores was paid to the assessee out of the sale consideration. The deferred purchase consideration retained by the escrow agent was payable in installment to the assessee as under:-

i. Rs. 4.80 Crores on expiry of 12 months

ii. Rs. 4.80 Crores on expiry of 24 months

iii. Rs. 4.80 Crore on expiry of 84 months from the date of escrow agreement.

4. That in the return of income the assessee offered the sale consideration of Rs. 172 Crore for computing the capital gain tax. However, full facts were disclosed in the computation of income. The assessee has disclosed full sale consideration and therefrom the amount retained in escrow account was deducted. It was also mentioned that the amount retained in escrow account has not accrued as income. That in the computation of income for Assessment Year 2010-11, the installment of Rs. 4.80 Crore received was duly offered to tax. That the above return was filed much before the completion of assessment proceedings for the year under consideration or even prior to any query having been raised by the Assessing Officer in this regard. He further stated that in the return of income for Assessment Year 2011-12, the assessee has again offered the amount refunded from escrow account of Rs. 4,80,00,000/-. That the assessee in the light of the decision of ITAT Pune Bench in the case of DCIT vs. Deccan Mechanical and Chemical Industrial P. Ltd. 287 ITR (AT) 65 (Pune) bonafide believed that the amount retained in the escrow account has not accrued and will accrue from time to time when it is realized from the said account. That the bonafide of the assessee is proved from the fact that in the respective years i.e. A.Ys. 2010-11 and 2011-12, the amount received from escrow account is duly offered to tax. That however, the Assessing Officer did not accept the assessee's contention and added the sum of Rs. 14.40 Crores to the capital gains disclosed by the assessee. The assessee initially filed the

appeal before the CIT(A) however did not press this issue because rate of tax in the year under consideration and subsequent year is the same. As a consequence, the assessee revised the return for A.Y.s 2010-11 and 2011-12 and withdrew the capital gain offered in those years on account of receipt from escrow account in those years. That the Assessing Officer levied the penalty under section 271(1)(c) on the above addition of Rs. 14.40 Crores which is also sustained by the CIT(A). He stated that there was neither any concealment of income nor furnishing of inaccurate particulars of income because the assessee has disclosed all the facts fully and correctly. The Assessing Officer has not pointed out that any fact was not disclosed or any fact disclosed by the assessee was false or inaccurate. He submitted on these facts the decision of Hon'ble Apex Court in the case of *Reliance Petroproducts Pvt. Ltd.* 322 ITR 158 would be squarely applicable. He further stated that the claim of the assessee is bonafide. It was based upon the decision of ITAT Pune Bench in the case of *Deccan Mechanical and Chemical Industrial P. Ltd.*, 287 ITR (80) 65. Further the assessee has duly disclosed the receipt from the escrow account in subsequent years as and when the amount was received. That the return for A.Y. 2010-11 was filed even before any query raised by the Assessing Officer with regard to addition on account of amount retained in escrow account. That even return for A.Y. 2011-12 was filed before the completion of assessment for assessment year 2009-10. Thus, the stand of the assessee was bonafide and consistent. He therefore, submitted that the levy of penalty is not justified, the same should be cancelled.

5. The learned DR on the other hand stated that it is clear case where assessee furnished the inaccurate particulars of income. That when the shares were sold for a sum of Rs. 186.84 Crore, the entire amount is the sale consideration accrued for the purpose of capital gain under section 48 of the Income Tax Act. The receipt of sale consideration is not relevant while computing the capital gain because it is chargeable on the sale consideration accrued or received as a result of transfer. Therefore, mere accrual of sale consideration is enough for charging capital gain and it is not necessary that it

should be received. She further stated that the decision of Hon'ble ITAT Pune Bench in the case of Deccan Mechanical and Chemical Industrial P. Ltd., 287 ITR (AT) 65 relied upon by the assessee's counsel is not applicable because that was a case of contractor who was executing the contracts with Maharashtra State Electricity Board. Under the agreement of 10% of the billing amount was payable by the contractee after satisfactory completion of contract work which included performance test and final acceptance. Thus there was some contingency with regard to receipt of retention money. But in the case under appeal it is a simplicitor receipt of sale consideration on transfer of shares which was already completed during the accounting year relevant to assessment year under consideration. She therefore, submitted that on these facts. The decision of Hon'ble ITAT Bench in the case of Deccan Mechanical and Chemical Industrial P. Ltd., 287 ITR (80) 65 would not be applicable and the assessee was supposed to disclose the entire sale consideration. Since the assessee did not disclose the entire sale consideration it is a clear case of furnishing of inaccurate particulars of income and therefore penalty under section 271(1)(c) was rightly levied.

6. We have carefully considered the arguments of both the sides and perused the materials placed before us. In the case of *Reliance Petroproducts Pvt. Ltd.* (supra), the Hon'ble Apex Court has examined the circumstances when the assessee can be said to have furnished the inaccurate particulars. Their Lordships held as under:-

"A glance at the provisions of section 271(1)(c) of the Income Tax, 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 details 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.”

7. Reverting back to the facts of the assessee’s case, we find that at page no. 1 of the assessee’s paper book, it has given the copy of computation of income. The relevant portion of which reads as under:-

<i>CAPITAL GAINS</i>	<i>Amount</i>	<i>Amount</i>	<i>Amount</i>
<i>Long term capital gain Exempt u/s 10(38)</i>	<i>-9949965</i>		
<i>Long term capital gain ors without Indexation (on sale of shs of Dabur Pharma Ltd. without STT) (met)</i>	<i>1372138694 26601938 144000000</i>	<i>1201536756</i>	
<i>Less: Professional charges</i>			
<i>Less: Amount retained in escrow account</i>			
<i>Amount not accrued as income (ITAT Pune B Bench)</i>	<i>3442230</i>	<i>3442230</i>	
<i>Long term capital gain ors with indexation</i>			
<i>Short Term Capital Gain U/s 111A</i>	<i>-3508952</i>		
<i>Short Term Capital Gain ORS</i>	<i>2703509</i>		
	<i>-805443</i>	<i>-805443</i>	<i>1204173543</i>

8. From the above, it is evident that the assessee has disclosed the total sale consideration i.e. without deducting the amount retained in escrow account and thereafter reduced the amount retained in escrow account claiming that the amount has not accrued as per ITAT Pune “B” Bench decision. During the assessment proceedings again the same claim was made

by the assessee. The Assessing Officer did not agree with the assessee's claim and held as under:-

“The Hon'ble ITAT accepted that there was a significant risk that the retention money may be held back to cover any unsatisfactory performance and also the possibility of repair and maintenance expense during the warranty period. However, in the assessee's case the facts are entirely different, as no such significant risks like those mentioned in the case law relied exist. Therefore, the assessee's argument as well as reasons for withholding the part of sale consideration is without reason and merit. Under these circumstances, the entire consideration of Rs. 186,84,64,840/- should be brought to tax. Therefore, the amount of Rs. 14.4 crore which was part of the total consideration and not offered to tax is being brought to tax and added to the total income of the assessee.

(Addition:- 14,40,00,000/-)

I am also satisfied the assessee has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. Hence, penalty proceedings are being initiated separately.”

9. Thus the Assessing Officer distinguished the decision of ITAT Pune Bench on the ground that in the said case the ITAT has accepted that there was significant risk that the retention money may be held back due to unsatisfactory performance while there is no significant risk involved in the transfer of shares by the assessee. The learned counsel for the assessee has explained before us that in the case of assessee also the risk was involved in respect of money which was kept in escrow account because it could have been adjusted against the outstanding tax liability of the company i.e. M/s Dabur Pharma Ltd., if it remain unpaid by the said company. Thus the decision of ITAT Pune Bench is squarely applicable. However before us the dispute is not with regard to the addition of 14.40 Crore to the capital gain but the limited dispute is whether penalty under section 271(1)(c) is leviable on the above addition of Rs. 14.40 Crore. The Assessing Officer has levied the penalty for furnishing inaccurate particulars of income. The Hon'ble Apex Court in the case of Reliance Petroproduct Pvt. Ltd., has examined the term “inaccurate particulars of income” and stated “whether no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars”. In this case, admittedly no information

given in the return of income is found to be incorrect or inaccurate. It is a case where the claim of the assessee that the sum of Rs. 14.40 Crore retained in the escrow account should be excluded from sale consideration for the year under consideration and should be taxed in the years in which it is received, was not accepted by the Assessing Officer. The Hon'ble Apex Court has clearly stated in the above mentioned case "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." In the case under appeal before us, the assessee made a claim which is not accepted by the Assessing Officer however, merely because a claim made by the assessee is not accepted by the Assessing Officer will not amount to furnishing the inaccurate particulars of income by the assessee so as to make him liable for penalty under section 271(1)(c) . Therefore on the facts of the assessee's case, the decision of reliance Petroproduct Ltd., is squarely applicable. We may also mention that the stand of the assessee is bonafide as well as consistent because in the return of income for subsequent years i.e. Assessment Years 2010-11 and 2011-12 when the installment of amount retained in escrow account is received, the assessee has voluntarily offered such receipt for the purpose of capital gain tax. In view of above, we, respectfully following the above decision of Hon'ble Apex Court in the case of *Reliance Petroproducts Pvt. Ltd.* held that the levy of penalty under section 271(1)(c) is not called for in respect of the addition of Rs. 14.40 Crores to capital gain tax, the same is cancelled.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 30th April, 2019.

**Sd/
(K.N. CHARY)
JUDICIAL MEMBER**

**Sd/-
(G. D. AGRAWAL)
VICE PRESIDENT**

Dated: 30/04/2019
SH

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	29.04.2019	PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		
11.	Date of uploading	30.4.2019	