

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER

ITA No.7794/Del/2018

Assessment Year: 2007-08

V. K. Kapoor & Associates Pvt. Ltd. 17, Netaji Subhash Marg, Darya Ganj, New Delhi, PIN: 110002 PAN: AABCV1222F	Vs	ITO Ward-26(1) C.R. Building, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri N. S. Bhatnagar, Adv & Sh. N. C. Jain, Adv
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	06/05/2019
Date of Pronouncement:	20/05/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 12th October, 2018 of the CIT(A)-9, New Delhi for Assessment Year 2007-08.

2. Levy of penalty of Rs. 2,70,000/- u/s 271(1)(c) of the Income Tax Act by the A.O which has been upheld by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is a Private Limited Company and filed its return of income on 29th October, 2007 declaring total income of Rs.1,62,300/- which was processed u/s 143(1). Subsequently, the case of the assessee was reopened by issue of notice u/s 147 and the assessment was completed u/s 147/143 (3) on a total income of Rs.15,76,510/-, after making addition of Rs.10,75,539/- on account of deductions claimed u/s 24(b) and amount of Rs. 1,60,104/- for undisclosed amount of income from other sources. The assessee preferred appeal before the Ld.CIT(A) who sustained an addition of Rs.3,63,584/- out of the above additions. Thereafter, the assessee filed application u/s 154 and finally the income was recomputed at Rs. 8,62,157/-. Subsequently, the A.O initiated penalty proceedings and levied penalty of Rs. 2,70,000/- u/s 271(1)(c) of the Income Tax Act, 1961.

4. In appeal, the Ld.CIT (A) upheld the action of the A.O by observing as under:-

“3.2 I have perused the grounds of appeal, the submissions of the appellant and the order of the AO. The brief facts of the case are that the AO, during the assessment proceedings, had completed the assessment of the appellant at Rs 15,86,400, as against the returned income of Rs 5,00,970, filed by the appellant, thereby making an

addition of Rs 10,79,820 in the hands of the appellant. Against the order of the AO, the assessee went to the appellate authority. Thereafter, the CIT(A) 13, vide his order dt 08.11.2016 had restricted the amount of addition and had recomputed the income of the appellant at Rs 8,62,157/-. The AO, on such additions, levied a penalty of Rs 2,70,000, under the provisions of Sec 271(1)(c) of the Act.

3.4. The AO u/s 271(1)(c) computed tax payable on the total assessed income and levied penalty of Rs. 2,70,000/- thereupon. However, the AO has levied penalty on assessed income without reducing the amount of returned income there from and thus, the penalty is wrongly computed. As evident from the rectification order dated 28/07/2017 the addition of Rs. 3,63,384/- has been sustained by the CIT(A)-13, Delhi only on which penalty u/s 271(1)(c) of the Act can be levied. Thus, the AO is directed to re-compute the amount of penalty @ 100% of tax sought to be evaded on the stated amount of Rs. 3,63,384/- as against the assessed income of Rs. 8,62,157/-.

3.5 Before me, the appellant has submitted that no penalty can be levied on the addition, since the addition sustained by the CIT(A)-13, Delhi is on estimate basis. The appellant claimed that the AO has erred in computing the amount of disallowance in the hands of the appellant.

3.6 On considering the submissions of the appellant, I do not find any merit in it. The CIT(A), vide order dt 08,11,2016, had very well concluded that the allowable interest, under the provisions of Sec 24(b) is Rs 217663 as against the claim of the appellant at Rs 581047. This means that the appellant had intentionally jacked up the deduction, to lower its taxes, thereby leading to concealment of income by the appellant. The concealment of income is very much apparent from the assessment order and the appellate order. Thus this intentional reduction in the taxable income of the appellant, which has been upheld by the appellate authority as well,

tantamount to concealment of income and thus, making it eligible for penalty u/s 271(1)(c). Thus, the grounds raised by the appellant are dismissed and the penalty is upheld.

5. Aggrieved of such order of the CIT (A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee drew the attention of the Bench to Pages 26 to 28 of the paper book and submitted that full details were given by the assessee and nothing was hidden from the Department. The details of interest was declared in the audit report. Referring to the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products Ltd. reported in 322 ITR 324, he submitted that penalty in the instant case is not leviable merely on account of certain disallowance. Further, the interest expenses were disallowed on estimate basis. Since, there is no finding in the instant case that any details supplied by the assessee in the return of income is incorrect or false, therefore, no penalty is leviable. He accordingly submitted that penalty in the instant case was not sustainable.

7. The Ld. DR relied upon the order of the CIT(A) and A.O.

8. I have heard the rival arguments made by both the sides and considered the various decisions relied by the Ld. Counsel for the assessee. It is the submission of the Ld. Counsel for the assessee that full particulars were given and there was no

concealment of any particulars of income and disallowance of interest u/s 24(b) is mainly on account of estimated disallowance.

9. I find some force in the arguments of the Ld. Counsel for the assessee. As per the return of income and as per the assessment order, there is no difference in the rent receipt and the municipals tax paid but only difference is on account of interest. The expenses u/s 24(a)/ 24(b) as per the return of income is Rs. 10,43,827/- whereas as per the Assessment Order such amount is Rs. 6,80,443/-. Even the interest u/s 24(a) as per the return of income and as per the Assessment Order is same. The only difference is in the interest calculated as per Section 24(b) which as per the return of income is Rs.5,81,047/- where as per the Assessment Order the same is 2,46,662/-.A perusal of the details of the interest reflected in the audit report at Rs.5,81,047/- as under:-

	List of Interest paid	Interest	TDS paid
1.	Sh. Rajesh Kapoor	45577	4649
2.	Sh. Dinesh Kapoor	54717	5582
3.	Ms. Prabha Kapoor	88650	9043
4.	Ms. Mukti Kapoor	123690	12617
5.	Mr. Vinod Kumar Khanna	109953	11216
6.	M/s Shiva Petroleum India Ltd.	<u>158460</u>	<u>3559</u>

Total- 581047 46666

10. From the above, it is clear that all particulars were given and there is no concealment as such which in my opinion warrants levy of penalty/s 271(1)(c). The Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. reported in 322 ITR 158 has held that a mere making of a claim which is not sustainable in law cannot by itself will amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. Further, when the assessee has declared income of Rs.5,00,971/- and the A.O completed the assessment on a total income at Rs. 8,62,157/-, I fail to understand as to how and why the penalty has been levied by the A.O on the assessed income at Rs. 8,62,157/- instead of the difference of Rs.3,63,584/- being excess interest claimed as per u/s 24(b) of the Income Tax Act. This shows that the A.O has not applied his mind. Although, the CIT(A) has considered the same and sustained penalty on Rs. 36,33,584/-, however, the same in my opinion is not justified.

11. In view of the above discussion and considering the fact that full particulars were given and nothing was hidden from the Department and the disallowance of interest of Rs.3,63,584/- was on estimated basis, therefore, I am of the considered opinion that it is not a fit cast for levy of penalty u/s 271(1)(c) of the Income Tax Act. Therefore, I set aside the order

of the CIT(A) and direct the A.O to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

12. In result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court at the time of hearing itself i.e., on 20.05.2019.

Sd/-

(R.K PANDA)
ACCOUNTANT MEMBER

R.N*

Date:- 20.05.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	08.05.2019
Date on which the typed draft is placed before the dictating Member	08.05.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	20.05.2019
Date on which the final order is uploaded on the website of ITAT	20.05.2019
Date on which the file goes to the Bench Clerk	21.05.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

