

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No. 6368/DEL/2017
[Assessment Year: 2010-11]

Alang Auto & general Engineering
4, Navyug Market
Ghaziabad

Vs. The Dy. C.I.T
Circle 2
Ghaziabad

PAN : AABCA 9279 R

[Appellant]

[Respondent]

Date of Hearing : 22.07.2019
Date of Pronouncement : 22 .07.2019

Assessee by : Shri Satyajeet Goyal, CA

Revenue by : Smt. Rinku Singh, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal the assessee has challenged the order of the
CIT(A), Ghaziabad dated 05.07.2017 pertaining to A.Y 2010-11.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Act.

3. Roots for levy of penalty lie in the assessment order dated 19.02.2013 framed u/s 143(3) of the Act. The assessee is in the business of ship breaking and trading of ferrous and non-ferrous metal. Returned income of Rs. 1,22,23,430/- was assessed at Rs. 1,96,20,289/- after making the addition on account of fees paid to ROC Rs. 7,500/-, addition on account of prior period expenses Rs. 31,710/- and deemed dividend u/s 2(22)(e) at Rs. 73,57,649/-.

4. Penal proceedings were separately initiated u/s 271(1)(c) of the Act and penalty was worked out at Rs. 34,28,445/-, being 150% of the tax sought to be evaded.

5. The assessee carried the matter before the CIT(A) and the CIT(A) reduced the penalty to 100% of the tax sought to be evaded instead of 150%.

6. Before us, the ld. AR, at the very outset, stated that the addition on account of deemed dividend u/s 2(22)(e) of the Act amounting to

Rs. 73,57,649/- was deleted by the Tribunal. The ld. counsel for the assessee supplied copy of the order of the Tribunal.

7. In so far as the remaining two additions are concerned, the ld. AR stated that the Assessing Officer has disallowed the expenditure without doubting the genuineness of the expenditure and, therefore, no penalty is leviable in the light of the judgment of the Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd 322 ITR 158.

8. Per contra, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that the assessee was fully aware that filing fees paid to the ROC was of capital in nature and yet it claimed it as revenue expenditure. The ld. DR further stated that similar is the case with prior period expenses when the assessee was aware that prior period expenditure cannot be claimed during the year under consideration.

9. We have given a thoughtful consideration to the orders of the authorities below. In so far as the addition of Rs. 73,57,649/- is concerned, we find that the co-ordinate bench in ITA No.

3574/DEL/2014 vide order dated 03.04.2018 has deleted the addition.

The relevant findings of the co-ordinate bench read as under:

"5. We have heard the rival submissions and perused the material available on record. We are in complete agreement with the averments of the Ld. AR that the provisions of [section 2\(22\)\(e\)](#) of the Act would not be attracted in this case as the assessee company is not a shareholder in the company M/s Dayal Steels Pvt. Ltd who had given advance to the assessee company and we note that the assessee company's name does not figure in the list of the shareholders. The Ld. CIT (A) as well as the Assessing Officer have not disputed that the assessee company was not a shareholder in M/s Dayal Steels Pvt. Ltd. We find that this issue is squarely covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of [CIT vs. Ankitech \(P\) Ltd.](#) (supra). We also note that this judgment of the Hon'ble Delhi High Court was later followed by the Hon'ble Delhi High Court in the case of [CIT vs. A.R. Magnetics Pvt. Ltd.](#) reported in 220 Taxman 209 (Del) wherein the Hon'ble Delhi High Court held that the provisions relating to deemed dividend could not be invoked merely because the shareholders were common. In this case, it is ITA No. 3574/Del/2014 Assessment year 2010-11 seen that the sole ground for making the addition was that Mrs Rani Chawdhari was a common shareholder in both the companies. Therefore, we are unable to concur with the

findings of the Ld. CIT (A) on this issue and respectfully following the ratio of the Hon'ble Delhi High Court in the case of [CIT vs. Ankitech \(P\) Ltd.](#) (supra), we set aside the order of the Ld. CIT (A) on this issue and direct the Assessing Officer to delete this addition."

10. Since the foundation has been removed, the super structure must fall.

11. Coming to the remaining additions of Rs. 7,500/- being ROC fee and Rs. 31,710/- being prior period expenses, there is no quarrel that the genuineness of these expenses have not been questioned by the Assessing Officer. The Assessing Officer, while framing the assessment order was of the considered view that these expenses cannot be allowed - one being of capital in nature, and the other being not pertaining to the year under consideration. But in neither case, the genuineness has been questioned.

12. The Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd. [supra] has held as under:

“A glance at the provisions of section 271(1)(c) of the Income-tax Act, 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.”

13. Adverting to the facts of the case, in the light of the ratio laid down by the Hon'ble Supreme Court, we do not find any merit in the levy of penalty u/s 271(1)(c) of the Act in so far as these two disallowances of expenses are concerned. Accordingly, we direct the Assessing Officer to delete the penalty so levied u/s 271(1)(c) of the Act.

21. In the result, the appeal of the assessee in ITA No. 6368/DEL/2017 is allowed.

The order is pronounced in the open court on 22.07.2019.

**Sd/-
[LALIET KUMAR]
JUDICIAL MEMBER**

**Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 22nd July, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	22.07.2019
Date on which the typed draft is placed before the dictating Member	22.07.2019
Date on which the typed draft is placed before the Other Member	22.07.2019
Date on which the approved draft comes to the Sr.PS/PS	22.07.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	22.07.2019
Date on which the fair order comes back to the Sr.PS/PS	22.07.2019
Date on which the final order is uploaded on the website of ITAT	23.07.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	