

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2397/Ahd/2017  
Assessment Year 2011-12**

M/s. Priya Blue Industries Pvt. Ltd. 1563/A, Ashirwad, Rupani Sardarnagar Road, Bhavnagar PAN: AABCP2808B (Appellant)	Vs	The ACIT, Circle-1, Bhavnagar (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.  
Assessee by: Shri P.B. Parmar, A.R.**

Date of hearing : 24-09-2019  
Date of pronouncement : 21-10-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-6, Ahmedabad dated 16-08-2017, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the assessee is filed against the decision of Id. CIT(A) in confirming the penalty of Rs. 1,67,517/- levied u/s. 271(1)(c) of the act.

3. The fact in brief is that return of income declaring total income of Rs. 2,55,34,610/- was filed on 20<sup>th</sup> Sep, 2011 and the case was subject to scrutiny assessment. The order u/s. 143(3) of the act was passed on 14<sup>th</sup> March, 2014 determining total income at Rs. 3,92,81,029/-. The assessing officer has initiated penalty proceedings on the following additions.

<i>Disallowance of</i>	<i>Amount</i>
<i>Prior Period Brokerage and commission</i>	2,71,344/-
<i>Interest on late payment of Central Excise u/s 37</i>	6,480/-
<i>Gift and Presentation Expenses</i>	1,78,476/-
<i>Prior Period Consultancy Expenses</i>	19000
<i>Labour Welfare Expenses u/s 40A(3)</i>	29,000/-
<i>Total</i>	5,04,300/-

The assessee has filed appeal before the Id. CIT(A) and the Id. CIT(A) has sustained the above cited additions amounting to Rs. 5,04,300/-. During the course of penalty proceedings, the assessee has explained that it has furnished the complete particulars of all the five categories of expenses. The detailed submission of the assessee is produced at page no. 2 to 4 of the penalty order passed u/s. 271(1)(c) of the Act. The assessing officer has not agreed with the explanation and stated that assessee has furnished inaccurate particulars of income and Id. CIT(A) has also dismissed the appeal of the assessee. Therefore, the assessing officer has levied penalty of Rs. 1,67,517/- at 100% of concealed income of Rs. 5,04,300/- on account of disallowance of various expenses as cited above in this order.

4. Aggrieved against the decision of assessing officer, the assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

5. We have heard the rival contentions and perused the material on record. During the course of assessment, the assessing officer has made additions on disallowance of following expenses.

Disallowance of	Amount
Prior Period Brokerage and commission	2,71,344/-
Interest on late payment of Central Excise u/s 37	6,480/-
Gift and Presentation Expenses	1,78,476/-
Prior Period Consultancy Expenses	19,000/-
Labour Welfare Expenses u/s 40A(3)	29,000/-
Total	5,04,300/-

In respect of prior period brokerage and commission of Rs. 271344/-, the assessee explained that it has made provision for brokerage during the year under consideration because the payment of brokerage and commission was received by the assessee company during the next financial year. In respect of disallowance of expenses of gift and presentation, the assessee submitted that gift particulars were distributed for maintaining good commercial relationship for the requirement of business. Regarding interest on late payment to the central excise authority to the amount of Rs. 6480, the assessee explained that it has paid the interest on delayed payment on account of rectification of the mistake and there was no concealment of

particulars of income. Regarding disallowance of prior period consultancy services of Rs. 19,000/-, the assessee submitted that it has paid consultancy fees of Rs. 38000/- pertaining to F.Y. 2009-10 and F.Y. 2010-11 during the year under consideration after deduction of tax at source of Rs. 3800/-. The assessee explained that out of aforesaid payment an amount of Rs. 19000/- was pertained to F.Y. 2009-10 and its contention of applicability of provision of section 40(a)(ia) was rejected by the assessing officer. Regarding labour welfare expenses of Rs. 29,000/-, the assessee has explained that this amount was disallowed u/s. 40A(3) and there was no concealment of income and furnishing inaccurate particulars.

After considering the foregoing facts and nature of expenses, we find that it is clear from the submission of the assessee that the assessee has disclosed apposite particulars of above referred various expenses and the circumstances under which these expenses were incurred. After considering these material facts and nature of expenses and the circumstances under which the impugned expenses were incurred, we do not find any substance in the decision of the Id. CIT(A) that the assessee has concealed the particulars of income. Therefore, we delete the impugned penalty levied u/s. 271(1)(c) of the Act.

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

Order pronounced in the open court on 21-10-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 21/10/2019**

**आदेश कलम अत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील अाधकरण,  
अहमदाबाद