

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 7883/DEL/2019  
[A.Y 2012-13]

M/s Global Auto Parts India Pvt. Ltd  
A - 1/291, Janakpuri  
New Delhi

Vs. The Dy. C.I.T  
Circle - 12(1)  
New Delhi

PAN: AACCG 7502 L

(Applicant)

(Respondent)

Assessee By : Shri Kamal Sawhney, Adv  
Shri Prashant Meharchandani, Adv

Department By : Shri Bhuvnesh Kulshrestha, CIT, DR

Date of Hearing : 03.12.2019

Date of Pronouncement : 04.12.2019

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 4, New Delhi dated 31.07.2019 pertaining to assessment year 2012-13.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short]’.

3. The roots for levy of penalty lie in the assessment order framed u/s 143(3) of the Act. The appellant company is engaged in the business of manufacturing of auto parts. During the course of assessment proceedings, the Assessing Officer noticed that the finance cost of Rs. 26.11 crores includes loss of foreign currency of Rs. 21.22 crores. The assessee furnished details of external commercial borrowings on which foreign fluctuation loss has been claimed. The assessee was asked to explain the reasons for claiming loss as revenue expenditure.

4. In its reply, the assessee explained that during the period of establishment of manufacturing unit/production facility which was before the commencement of production facility, foreign exchange loss incurred on account of repayment of ECB for the purpose of setting up of manufacturing unit/production facility in India was treated as capital cost and was added to the cost of assets. It was

explained that such foreign currency loss was added to the cost of assets on the basis of accepted accounting principle and it was duly brought to the notice of the tax auditors. It was further brought to the notice of the Assessing Officer that while preparing the return of income/computation of income, inadvertently forex loss was not added back. Since the foreign exchange loss was not allowable as revenue expenditure, the Assessing Officer added the sum to the declared loss of Rs. 29.54 crores and assessed the assessee at a loss of Rs. 9.36 crores.

5. The Assessing Officer separately initiated penalty proceedings u/s 271(1)(c) of the Act and drawing support from the decision of the Hon'ble High Court of Delhi in the case of Zoom Communications Pvt Ltd ITA No. 07/2010 vide order dated 24.05.2010, levied penalty of Rs. 6,54,85,242/-.

6. The assessee carried the matter before the ld. CIT(A) but without any success.

12. Before us, the ld. AR vehemently stated that due to inadvertent error of the tax auditor/ return preparer forex loss could not be added

to the returned income and was shown as revenue expenditure. It is the say of the ld. counsel for the assessee that the Assessing Officer himself has accepted that the assessee has followed the accounting standards and has mentioned its audit report.

13. Referring to the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers [P] Ltd Civil Appeal No. 6924 of 2012, the ld. counsel for the assessee stated that a bonafide and inadvertent error should not form basis for imposition of penalty. The ld. counsel for the assessee further pointed out that the appellant company is in liquidation and has already assessed loss of Rs. 69.60 crores and at the fag end of its business, the assessee could not have derived any benefit by claiming forex loss as revenue expenditure. The ld. counsel for the assessee pleaded that there was no intention for any revenue leakage and in fact, inadvertent error has not caused any loss of revenue.

14. Per contra, the ld. DR supported the findings of the Assessing Officer and relied upon the decision of the Hon'ble Delhi High Court in the case of Zoom Communications [supra].

15. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the appellant company is in liquidation and has assessed loss of Rs. 69.60 crores. It is true that the assessee has claimed forex loss as revenue expenditure. It is equally true that once the Assessing Officer has disallowed the same, the assessee did not agitate the matter before the first appellant authority which is evident from the order of the Id. CIT(A) - 35, New Delhi dated 04.10.2017 wherein we can find grounds relating to foreign exchange loss of Rs. 21.22 crores was never pressed by the assessee and the same were dismissed.

16. Going deep into the facts of the case, we find that the appellant company is operating with no employees and is under liquidation with no business operations. It has sold its entire business vide agreement dated 31.07.2012 w.e.f 01.04.2012. All the employees of the assessee got transferred and it is managed by a liquidator. We find that the assessee had disclosed ECB to the tax auditor. However, while preparing the return of income, due to inadvertent unintentional error, forex loss was claimed as revenue expenditure.

17. In our humble opinion, inadvertent claim of expenditure would not, ipso facto, amount to concealment of income or furnishing of inaccurate particulars of income to levy penalty u/ 271(1)(c) of the Act. For this proposition, we derive support from the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products 322 ITR 158 and the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd [supra]. Considering the facts of the case in totality, we do not find this to be a fit case for levy of penalty u/s 271(1)(c) of the Act. We accordingly, direct the Assessing Officer to delete the penalty so levied.

18. In the result, the appeal of the assessee in ITA No. 7883/DEL/2019 is allowed

**The order is pronounced in the open court on 04.12.2019.**

**Sd/-**

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 04<sup>th</sup> December, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the approved draft comes to the Sr.PS/PS	
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