

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI WASEEM AHMED (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 6492/MUM/2018  
Assessment Year: 2013-14**

Binod Bhagat 255, Harihar Niwas, 3 <sup>rd</sup> Khetwadi Lane Mumbai PAN: AERPB2429P	<b>Vs.</b>	The ITO – 5(1)(1) R.No. 570, 5 <sup>th</sup> Floor Aayakar Bhavan, Mumbai – 400 020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri R.C. Jain. (AR)  
& Shri Ajay Daga (AR)  
Revenue by : Ms. Kavita P. Kaushik (DR)

Date of Hearing: 04/11/2019  
Date of Pronouncement: 15/11/2019

**ORDER**

**PER RAM LAL NEGI, JM**

The assessee has filed the present appeal against the order dated 14.06.2018 passed by the Commissioner of Income Tax (Appeals)-10 (for short 'the CIT(A), Mumbai, for the assessment years 2013-14, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the penalty order passed u/s 271(1)(c) of the Income Tax Act, 1961 (for short the 'Act').

Brief facts are that the assessee an individual and director of M/s. Shree Venkatesh Wire and Steel Pvt. Ltd and M/s. Anjani Steel Pvt Ltd., deriving income from salary, capital gain and income from other sources filed its return of income for the assessment year under consideration declaring the total income of Rs. 7,15,630/-. The return was processed u/s 143 (1) of the Act. The case was selected for scrutiny and accordingly the A.O completed the assessment u/s. 143(3) of the Act determining the total income of Rs. 8,70,210/-after making addition of Rs. 1,50,000/- by disallowing the claim of the assessee u/s. 24(b) of the Act. On the basis of the addition, the A.O

initiated proceedings u/s. 271(1)(c) of the Act, on the ground that the assessee has furnished inaccurate particulars of his income and has committed default within the meaning of section 271 (1)(c) of the Act and levied penalty of Rs.30,900/- u/s. 271(1)(c) of the Act. In the first appeal, the Ld. CIT(A) confirmed the penalty. Against the said findings of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

*“ 1. The Ld. CIT(A) erred in rejecting the ground of appeal raised before him with regard to the validity of notice u/s. 274 r.w.s. 271 of the Act as in the said notice, the ITO scored both the limbs of section 271(1)(c) of the Act and, therefore, is a notice without intending anything and depicts total lack of application of mind by the ITO.*

*2. The Ld. CIT(A) erred in upholding the action of the ITO of treating the appellant to be in default u/s. 271(1)(c) of the Act and consequently erred in confirming the penalty levied by the ITO.*

*2.(i) In doing so, he erred in holding that it was only when pointed out by the ITO that the appellant agreed to the disallowance and that the appellant has not elaborated the basis on which he erroneously claimed the deduction u/s. 24(b) of the Act. ”*

3. The assessee has challenged the impugned order both on the legal ground as well as on merits. On legal ground, the Ld. counsel pointed out that in the assessment order the AO proposed to initiate penalty u/s. 271(1)(c) of the Act for concealing and furnishing inaccurate particulars of income by the assessee. However, the assessee received notice u/s 274 r.w.s 271 of the Act, in which the AO has struck off the portion of notice containing allegation of concealing of income or furnishing inaccurate particulars thereof. The Ld. counsel submitted that since, the action of the AO was bad in law, the Ld. CIT(A) ought to have set aside the penalty order passed by the A.O. The Ld. Counsel relying on the decision of the Hon'ble Bombay High Court in the case of *CIT v. Shri Samson Perinchery* in Income Tax Appeal Nos. 1154 of 2014 , 953 of 2014, 1097 of 2014 and 1226 of 2014 dated 05.01.2017 and in the case of

the *PCIT v. New Era Sova Mine*, in Tax Appeal NOs.70 of 2018, 69 of 2018 & 6 of 2019, submitted that the order passed by the Ld. CIT(A) is contrary to the law laid down by the Hon'ble Bombay High Court in the above referred cases, therefore not sustainable. On merits the Ld. counsel submitted that infact, the assessee had wrongly claimed the deduction u/s. 24(b) amount to Rs. 1,50,000/- under the *bona fide* belief that the interest was paid for purchase of residential house contrary to the provisions that the same was allowable in five equal installments only from the year in which the construction was completed. In reply to the query raised by the A.O. during assessment proceedings, the assessee admitted the mistake and withdrew the claim of deduction u/s. 24(b) of the Act. The Ld. counsel relying on the decision of the coordinate Bench in the case of *DCIT v. M/s. Bansi Mall* in ITA No. 1878/Mum/2017 for the A.Y. 2012-13, the order of the Hon'ble Allahabad High Court in the case of *M/s. Paswara Petrochem Limited v. CIT* in ITA No. 1054/All/2017 and the Judgment of the Hon'ble Bombay High Court in the case of *PCIT v. United Lingeragencies of India Pvt Ltd.*, in Income Tax appeal NO. 787 of 2016, 978, 937 & 996 of 2016 dated 07.01.2019 submitted that penalty u/s. 271(1)(c) cannot be imposed on the basis of the wrong claim made by the assessee under a *bona fide* belief. The Ld. Counsel further pointed out that even on merits the impugned order passed by the Ld. CIT(A) is not in accordance with the aforesaid decisions. In view of the aforesaid facts the Ld. counsel submitted that the impugned order passed by the Ld. CIT(A) may be set aside and the penalty levied u/s 271(1)(c) of the Act may be deleted.

4. On the other hand the Ld. Departmental Representative (DR) supporting the concurrent orders passed by the authorities below submitted that since the assessee had made a wrong claim and the claim was withdrawn when this fact was brought to the notice of the assessee, the Ld. CIT(A) has rightly confirmed the penalty levied u/s. 271(1)(c) of the Act.

5. We have heard the rival submissions and also perused the material on record including the cases relied upon by the Ld. counsel for the assessee, in the light of the rival contentions of the parties. As pointed by the Ld. Counsel

for the assessee the A.O. has observed in the assessment order that the assessee has concealed his income and also furnished inaccurate particulars of his income. Whereas in the notice issued u/s. 274 r.w.s. 271 of the Act, the A.O. has struck off both the limbs and sent the notice asking the assessee to appear before him on 30<sup>th</sup> October, 2015. Admittedly, the A.O. has not pointed out the limb under which he wanted to initiate proceedings. Accordingly, the order passed by him was contrary to the law laid down by the Hon'ble Jurisdictional high court in *CIT v. Shri Samson Perinchery* (Supra) and *PCIT v. New Era Sova Mine* (supra) as in the said cases the Hon'ble jurisdictional High Court has held that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated and it cannot be on a fresh ground of which the assessee has no notice.

6. So far as the contention of the assessee on merits is concerned, the Hon'ble Bombay High Court in the case of *Pr.CIT v. United Lineragencies of India Pvt. Limited* (supra) has dismissed the appeal filed by the Revenue against the order of the Tribunal vide which the Tribunal had deleted the Penalty u/s. 271 (1)(c) of the Act accepting the assessee's contention of *bona fide* mistake in furnishing details of its income. Similarly, in the case of *M/s. Paswara Petrochem Limited* (supra) the Hon'ble Allahabad High Court has deleted the penalty u/s. 271(1)(c) of the Act, holding that in order to attract the provisions of section 271(1)(c) of the Act, the assessee must be found to have failed to prove that explanation offered is not only *bona fide* but all the facts relating to the same and material to the computation of his income have been disclosed by him.

7. In the present case, the assessee had taken housing loan and paid interest of Rs. 2,03,264/- on loan borrowed and claim deduction u/s 24(b) of the Act. Since, the house was under construction at the end of the year 31.03.2013, the AO asked the assessee to explain as to why deduction claim u/s 24(b) amounting to Rs. 1,50,000/- should not be disallowed. The assessee pleaded bona fide mistake and rectified the mistake. In our considered view, the assessee has furnished bona fide and genuine explanation regarding the

mistake committed by it while filing its return of income. We do not see any *mala fides* in claiming deduction u/s 24(b) of the Act. Moreover, the assessee has disclosed all facts and material in its computation of income, therefore, it cannot be said that the assessee has concealed its income.

8. Hence, in view of the facts and circumstances of the case and the ratio of law laid down by the Hon'ble Bombay High Court and the Hon'ble Allahabad High Court relied upon by the assessee, allow the appeal and set aside the impugned order passed by the Ld. CIT (A). Accordingly, we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act.

In the result, appeal filed by the assessee for assessment year 2013-2014 is allowed.

Order pronounced in the open court on 15<sup>th</sup> November, 2019.

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 15/11/2019

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai