

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.2518/Del./2015
(Assessment Year : 2006-07)**

M/s. M & M Machine Craft (P) Ltd., vs. DCIT, Circle 6 (1),
C/o M/s. Malik & Co. (Advocates), New Delhi.
305, Thapar Nagar,
Meerut.

(PAN : AAACM6385K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Malik, Advocate
REVENUE BY : Shri Saras Kumar, Senior DR

Date of Hearing : 22.01.2020

Date of Order : 17.02.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER

Appellant, M/s. M & M Machine Craft (P) Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 23.02.2015 passed by the Commissioner of Income-tax (Appeals)-6, New Delhi, confirming the penalty order dated 15.03.2013 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2006-07 on the grounds inter alia that :-

“1. That the appellant disclosed all primary facts relating to deduction under different heads. All the primary facts disclosed by the appellant- assessee had not been found to be false. The disallowances were as a result of variation in interpretation of the statutory provisions and not because of furnishing of inaccurate particulars of income. On facts and in law thus initiation of penalty proceedings was not warranted.

2. The initiation of penalty proceedings followed by the levy of penalty on the ground that the appellant filed inaccurate particulars of income and evaded the tax on the income of Rs.23,52,505/- under three heads of income was void, illegal and without jurisdiction and barred by limitation.

3. That the levy of penalty of Rs.7,91,852/-u/s 271 (1)(c) of I.T. Act made by the Ld. Assessing Officer and sustained by the Ld. CIT(Appeals) being illegal and untenable on facts and in law deserves to be quashed and cancelled.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee company being incorporated on 02.12.1988 is into the business of manufacturing and sale of engineered metal products for auto and allied engineering industries such as Aluminum Die Cast, Sheet Metal, etc.. On the basis of assessment framed under section 143 (3) of the Act at total income of Rs.1,85,64,980/- by making various disallowances inter alia addition of Rs.22,77,910/-, Rs.44,592/- & Rs.30,000/- on account of withdrawal of claim of deduction u/s 80IB, wrongly claimed deduction u/s 80G from 50% to 100% & on account of TDS not deducted by the assessee on legal and professional expenses respectively, the penalty proceedings were initiated u/s 271(1)(c) of the Act. Declining the contentions raised by the assessee that it was inadvertent claim of the assessee, Assessing

Officer (AO) levied penalty of Rs.7,91,852/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the penalty by dismissing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee company was incorporated on 02.12.1988 and its accounts are audited u/s 44AB of the Act. It is also not in dispute that during the assessment proceedings, assessee company has withdrawn its claim for deduction of Rs.22,77,910/- made as deduction u/s 80IB by moving letter dated 09.07.2008 before the AO on the ground that it was inadvertently claimed. It is also not in dispute that assessee company has not filed any revised return within the period prescribed u/s 139(1) of the Act rather withdrew the claim during the assessment proceedings by moving letter (supra) before the AO. It is also not in dispute that

the assessee accepted aforesaid disallowance/addition made by the AO and confirmed by the ld. CIT (A).

6. In the backdrop of the aforesaid facts and circumstances of the case, orders passed by the lower authorities and arguments addressed by the Authorized Representatives of both the parties to the appeal, the sole question arises for determination in this case is:-

“as to whether assessee company having audited accounts has deliberately and consciously furnished inaccurate particulars of income by claiming inadmissible deductions under section 80IB (subsequently withdrawn during assessment proceedings) and claiming deduction u/s 80G @ 100% instead of 50% so as to attract the provisions contained u/s 271(1)(c) of the Act?”

7. When we examine the aforesaid question framed in the light of the fact that assessee company having been incorporated way back in 1988 whose accounts are audited cannot be accepted by any stretch of imagination that they have claimed the deduction u/s 80IB to the tune of Rs.22,77,910/- and Rs.44,592/- u/s 80G of the Act inadvertently. Except the letter dated 09.07.2008 written by the assessee company to the AO during assessment proceedings, no cogent reason whatsoever has been brought on record as to what was the material with assessee company which is manned by expert hands put under the impression that they are eligible for deduction u/s 80IB of the Act.

8. For facility of reference, extract of the letter dated 09.07.2008 written by the assessee company to the AO is extracted as under :-

"In our Income Tax Return filed for the captioned assessment year declaring Taxable Income at Rs.1,59,42,885/- wherein the assessee company has claimed the deduction u/s 80-IB of the Income Tax Act, 1961. In this connection, it is respectfully submitted that while going through our records we have noticed as under:

- 1. That the deduction u/s 80 IB has been inadvertently claimed at by the Assessee Company,*
- 2. That a loss of Rs.154143/- on sale of derivative was inadvertently not reduced from the income.*

Therefore, we are revising our Computation of Income at the total taxable income of Rs.1,80,66,649/- i.e. without the deduction of Rs.22,77,910/- u/s 80IB of the Act. You are required to please treat this revised statement of assessable income showing taxable income for the aforesaid assessment year at Rs.1,80,66,649/- as forming part and parcel of our original return of income. Income Tax Demand on the same will be deposited by August, 2008."

9. Perusal of the aforesaid letter categorically goes to prove that no cogent reason has been explained except by writing words that the deduction has been claimed "inadvertently" by the assessee company. Neither it is disclosed during the assessment proceedings nor during the penalty proceedings if such impression to make inadvertent claim of wrong deduction was based upon audited report of the assessee company or it was mere mistake at the time of filing a return. So, the factum of claiming inadmissible deduction u/s 80IB and 80G and then withdrawing the same when

the case of the assessee put under scrutiny proceedings is nothing but a deliberate and conscious decision of the assessee company to furnish inaccurate particulars of income by claiming wrong deduction.

10. Ld. AR for the assessee challenging the impugned penalty order contended that there is no valid satisfaction on the part of the AO in the assessment order to initiate the penalty proceedings u/s 271(1)(c) of the Act and relied upon the decision of Hon'ble Supreme Court in case of *Varkey Chacko vs. CIT (1993) 203 ITR 885*, *CIT vs. Mohinder Lal 168 ITR 101* & *Mrs. Indrani Sunil Pillai vs. ACIT, Circle 21 (1), Mumbai ITA No.1339/Mum./2016*. On the other hand, ld. DR for the Revenue relied upon the orders of the lower authorities below.

11. Before proceeding further, we would extract the satisfaction recorded by the AO in the assessment order, which is as under :-

“ In view of the facts and reasons discussed above, it is amply clear that the assessee company has furnished inaccurate particulars with a view to evade the tax. The reasons described above may be treated as satisfaction note for initiating penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 for the above all additions made. For the sake of brevity and non duplication, the same are not reproduced here again.”

12. When we examine the aforesaid satisfaction recorded by the AO in continuation with the addition made by the AO under separate heads viz. for claiming wrong deductions u/s 80IB and

80G, made addition for not deducting the TDS for making payment of legal and professional charges etc. we are of the considered view that it is a valid satisfaction because it is categorically mentioned in the satisfaction note that, “*assessee company has furnished inaccurate particulars with a view to evade the tax and the reason described above may be treated as satisfaction note for initiating the penalty proceedings u/s 271(1)(c) of the Act for the above two additions made*”. Then, on the basis of aforesaid satisfaction recorded by the AO, notice was issued to the assessee company u/s 274 r/w section 271(1)(c) of the Act which has never been challenged by the assessee company. All these facts go to prove that penalty proceedings in this case are initiated on the basis of valid satisfaction and the decisions relied upon by the assessee are not applicable to the facts and circumstances of the case.

13. Ld. AR for the assessee further contended that penalty cannot be levied u/s 271(1)(c) on the basis of wrong claim of deduction u/s 80IB of the Act amounting to Rs.22,77,910/-, for claim u/s 80G @ 100% instead of 50% and for non-deduction of TDS on professional fee and relied upon the decision of Hon’ble Supreme Court in the case of *Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)*.

14. No doubt, merely making claim which is not sustainable *ipso facto* not sufficient to term it “*furnishing of inaccurate particulars of income*”, of the assessee and provisions contained u/s 271(1)(c) are not attracted as has been held by Hon’ble Supreme Court in case of ***Reliance Petro Products Pvt. Ltd.*** (supra), but we are of the considered view that this is a case clearly distinguishable from the case of ***Reliance Petro Products Pvt. Ltd.*** (supra) because in this case claiming of inadmissible deductions u/s 80IB and 80G is not a wrong claim rather a deliberate and conscious scheme to evade the tax by furnishing inaccurate particulars of income, if not caught in scrutiny.

15. Assessee in this case has never revised its return during the period prescribed u/s 139(1) rather withdrew the claim during assessment proceedings when confronted by the AO. So, by no stretch of imagination, the claim made by the assessee for deduction u/s 80IB and 80G can be considered as inadvertent claim rather it is deliberate and conscious claim made to evade the taxes. Moreover, it is nowhere the case of the assessee company that the claim of deduction has been made on the basis of wrong audited reports or its audited report has been subsequently corrected by its auditors. Had there been any inadvertent mistake on the part of the assessee company to claim such deductions, assessee company

would have filed revised return within the prescribed period, but no such revised return has been filed which leads to the conclusion that it was a deliberate and conscious attempt to evade tax.

15. Hon'ble Delhi High Court in case of *CIT vs. Usha International Ltd.* (2010 254 CTR 509 has decided the identical issue in identical facts and circumstances of the case and confirmed the levy of penalty u/s 271(1)(c) of the Act on the ground that when facts and circumstances are categoric enough to prove that revised return as not filed voluntarily but under pressure when the case was put to scrutiny it is concealment of income by way of furnishing inaccurate particulars of income.

16. Hon'ble Delhi High Court in case of *CIT vs. Zoom Communication P. Ltd.* (2010) 327 ITR 510 (Delhi) duly discussed the judgment rendered by Hon'ble Apex Court in the case of *Reliance Petro Products Pvt. Ltd.* (supra) by returning following findings :-

“18. In the case of Reliance Petro Products Private Limited (2010) 322 ITR 158 (SC), the addition made by the Assessing Officer in respect of the interest claimed as a deduction under Section 36(1)(iii) of the Act was deleted by the Commissioner of Income Tax(Appeals) though it was later restored, by the Tribunal, to the Assessing Officer. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances, that the Tribunal came to the conclusion that the assessee had neither concealed the income nor filed inaccurate particulars thereof. In recording this finding, the Tribunal felt that if two views of the claim of the assessee were possible, the explanation offered by it could not be said to be false. This, however, is not the factual position in the

case before us. The facts of the present case thus are clearly distinguishable.

19. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation 1 to Section 271(1) would come into play and work to the disadvantage of the assessee.

20. The Court cannot overlook the fact that only a small percentage of the Income Tax Returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bonafide, it would be difficult to say that he would still not be liable to penalty under Section 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bonafide while making a claim of this nature, that would give a licence to unscrupulous assesseees to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self Assessment under Section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a malafide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have.”

17. At no point of time, either before assessment proceedings or during appellate proceedings assessee has come forward with claim that it has acted bonafide while making the inadmissible claim u/s 80IB and 80G.

18. Furthermore, when it is proved on record that the claim of deductions made by the assessee company u/s 80IB and 80G is not

only incorrect but a malafide under Explanation 1 to section 271(1)(c) is attracted to confirm the penalty levied on the assessee company.

19. Ld. AR for the assessee further contended that penalty initiated on the basis of addition of Rs.30,000/- made u/s 40A(ia) of the Act for non-deduction of TDS cannot be levied as proper disclosure was made by the assessee and relied upon the decision rendered by the coordinate Bench of the Tribunal in case of ***Syndicate Labels vs. ACIT in ITA No.4386/Del/2014 order dated 21.10.2015***. On the other hand, ld. DR for the Revenue relied upon the orders of the lower authorities below.

20. We are of the considered view that contention made by the ld. AR for the assessee in this regard is sustainable because qua addition of Rs.30,000/- assessee company has made full disclosure of all the facts as to making payment on which TDS was not deducted. So, the assessee had no occasion to furnish inaccurate particulars to conceal its income as the only dispute was qua deduction or non-deduction of tax for the payment made on account of legal and professional expenses.

21. Coordinate Bench of the Tribunal in case of ***Syndicate Labels vs. ACIT*** (supra) deleted the penalty levied for non-deduction of tax u/s 40A(ia) by returning following findings.

“3. After considering rival submissions and perusing relevant material on record, it is observed that the instant penalty has been imposed only in respect of disallowance u/s 40(a)(i) of the Act. The assessee entertained a bona fide belief about the non-deduction of tax at source from the amount paid to M/s Maersk India Pvt. Ltd. on the basis of a Circular, as per which, the foreign shipping companies and their agents were governed by the provisions of Section 172 and not by Section 194C of the Act. Though it is an admitted fact that the assessee made the payment to a resident but the fact remains that principal of M/s Maersk India Pvt. Ltd., being M/s A.P. Moller-Maersk A/S, Denmark, was given 100% DIT relief, copy of which letter issued by the office of Deputy Director of Income Tax (International Taxation) dated 23.04.2007, has been placed on record. These facts indicate that the assessee was under a bona fide belief that the amount paid to M/s Maersk India Pvt. Ltd. was not liable for deduction of tax at source. Be that as it may, I am concerned with the imposition and confirmation of penalty u/s 271(1)(c) of the Act which presupposes concealment of income or furnishing of inaccurate particulars of income. Here is a case in which the assessee neither concealed any income nor furnished inaccurate particulars. Deduction on account of M/s Maersk India Pvt.Ltd. was claimed after making due payments. The dispute is only about deduction or non-deduction of tax at source from payments to M/s Maersk India Pvt.Ltd. for which disallowance has been made u/s 40(a)(ia) of the Act. Under no circumstance can such a disallowance be brought within the ambit of Section 271(1)(c) of the Act. The assessee made a proper disclosure about the expense claimed by it as deduction which was neither bogus nor otherwise non-deductible but 3 ITA-4386/Del/2014 for the application of Section 40(a)(ia) of the Act. Overturning the impugned order, I order for the deletion of the instant penalty.”

22. So, following the aforesaid decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that penalty for addition of Rs.30,000/- u/s 40A(ia) for non-deduction of TDS is not sustainable in the eyes of law, hence penalty order to that extent passed by the AO and confirmed by the Id. CIT (A) is not sustainable.

23. In view of what has been discussed above, we find no illegality or perversity in the order passed by the AO levying the penalty on the assessee qua additions on account of inadmissible claim of deductions u/s 80IB and 80G, hence impugned order passed by the Id. CIT (A) is confirmed to that extent. However, penalty levied by the AO and confirmed by the dl. CIT (A) qua addition of Rs.30,000/- on account of non-deduction of TDS on payment of legal and professional expenses is not sustainable, hence ordered to be deleted. Consequently, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in open court on this 17th day of February, 2020.

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 17th day of February, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-6, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**