

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT  
DB-III), 'E' BENCH MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM**

**&**

**SHRI RAM LAL NEGI, JM**

**ITA No.5576/Mum/2018  
(Assessment Year :2014-15)**

M/s. Emco Dyestuff Pvt.Ltd. Unit No.304, Western Edge W.E. Highway Dattapada Road Borivali (E) Mumbai – 400 066	Vs.	Commissioner of Income Tax(A)-20, 5 <sup>th</sup> Floor, Earnest House, Nariman Point Mumbai-400021
<b>PAN/GIR No.AACE1167D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri K. Gopal
Revenue by	Shri Amit Pratap Singh
<b>Date of Hearing</b>	<b>24/08/2020</b>
<b>Date of Pronouncement</b>	<b>28/08/2020</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.5576/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal dated 30/08/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The only issue to be decided is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act amounting to Rs.92,716/- in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a private limited company engaged in trading of chemicals, dyes and intermediates. The assessee also acts as a commission agent. The assessee filed its return of income for the A.Y.2014-15 on 26/11/2014 declaring total income of Rs.2,19,41,810/- comprising of income from house property and income from business. The assessment was completed u/s.143(3) of the Act on 26/12/2016 determining total income at Rs.3,30,50,210/-. In first appeal, the income of the assessee was enhanced by the Id. CIT(A) to the extent of Rs.2,72,775/-.

3.1. We find that during the year under appeal, assessee had let out five office premises and income earned from the same had been offered to tax under the head 'income from house property'. These properties were purchased by the assessee in the earlier years and was used as office premises for the purpose of its business. These details were duly provided by the assessee before the Id. AO as far as before the Id. CIT(A). The purchase of these properties duly formed part of fixed assets in the balance sheet of the assessee and also in the 'block of assets' for the purpose of claiming depreciation under the Income Tax Act. The assessee claimed depreciation on these properties u/s.32 of the Act. We find that there is no dispute with regard to the treatment of rental income getting taxed under the head 'income from house property'. The only dispute before us is whether the assessee is entitled for depreciation on properties which were let out, income from which is taxed under the head

'income from house property'. We find that the assessee had pleaded that the said properties formed part of block of assets which cannot be identified once asset enters into the block and hence, there is no question of disallowance of depreciation of those properties by identifying the value from the block. It was the plea of the assessee that once the asset enters into the block, it loses its identity. However, despite this, the assessee took efforts in furnishing the purchase cost of the respective properties and the written down value before the lower authorities. This enabled the Id. CIT(A) to actually identify the written down value of respective properties that were let out and calculate the depreciation amount at Rs.8,81,137/-. The Id. CIT(A) had disallowed the said depreciation on the ground that since the rental income derived from those properties were taxed under the head 'income from house property' and assessee would be entitled for statutory deduction @30% towards repairs alone and no further deduction is permissible under the head 'income from house property'. We find that this Tribunal while disposing off the quantum appeal, upheld the action of the Id. CIT(A) in principle, in disallowing the depreciation thereon.

3.2. We find from the penalty notice issued u/s.274 r.w.s. 271(1)(c) of the Act dated 26/12/2016, the offence committed by the assessee is mentioned as furnishing of inaccurate particulars of income. We find that there is no satisfaction recorded by the Assessing Officer in the quantum assessment order framed u/s.143(3) of the Act dated 26/12/2016 specifying the offence committed by the assessee. However, we find that the penalty made u/s.271(1)(c) of the Act has been ultimately levied by the Id. CIT(A)-20, Mumbai for concealment of income. We find that the penalty notice has been issued by the Id. DCIT while completing the assessment proceedings for furnishing of inaccurate

particulars of income. Ultimately, the penalty has been levied by the Id. CIT(A) only for the enhanced portion of income of Rs.2,72,775/- and the tax sought to be evaded thereon amounting to Rs.92,716/- on the ground that assessee had concealed the particulars of income. Hence, it could be safely concluded that this is a case where penalty has been initiated on one limb of the offence and penalty levied ultimately on a different limb of the offence. In these type of cases, the Hon'ble Jurisdictional High Court had held that when there is no satisfaction recorded by the Id. AO in the quantum assessment order and penalty initiated on one limb and ultimately levied on different limb of the assessee, then in such cases, the penalty levied deserved to be cancelled. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Samson Perinchery reported in 392 ITR 4 (Bom). Similar view has also been taken by the Hon'ble Jurisdictional High Court in the recent decision in the case of Ventura Textiles Ltd., vs. CIT dated 12/06/2020 reported in 117 Taxman.com 182(Bom). Respectfully following the aforesaid decision, we hold that the penalty levied in the instant case amounting to Rs.92,716/- is not sustainable in the eyes of law.

3.4. Even otherwise on merits, we find that it was the assessee which has actually provided all the details in respect of value of properties which were purchased from Financial Year 1990-91 onwards and the respective written down value at the end of each year before the lower authorities. It was the very same details that were furnished by the assessee which was placed reliance by the Id. CIT(A) while levying the penalty. Hence, there cannot be any concealment of particulars of income on the part of the assessee. When all the information available for determining the income of the assessee is placed on record voluntarily by the assessee either in the return or before the authorities at the time of assessment or

appellate proceedings, then there cannot be any concealment of particulars of income that can be attributed on the assessee. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Price Water Coopers (P) Ltd., vs. CIT reported in 348 ITR 306. We also find that the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., reported in 322 ITR 158 had observed with regard to furnishing of inaccurate particulars of income as under:-

*“9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—*

*"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."*

*We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.”*

3.5. Hence, in view of the aforesaid observations and respectfully following the aforesaid judicial precedents, even on merits, we find that the penalty levied in the sum of Rs.92,716/- deserves to be cancelled. Accordingly, the ground raised by the assessee is allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 28/08/2020 by way of proper mentioning in the notice board.

Sd/-  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

Sd/-  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 28/08/2020

KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai