

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.1584/Hyd/2016		
Assessment Year:2011-12		
Synfosys Business Solutions Ltd., Hyderabad. PAN: AAFCS 3590 K (Appellant)	Vs.	Income Tax Officer, Ward-3(4), Hyderabad. (Respondent)
Assessee by:	Shri A. Srinivas	
Revenue by:	Shri Rajat Mitra, DR	
Date of hearing:	14/09/2020	
Date of pronouncement:	17/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-3, Hyderabad in appeal No. 0236/CIT(A)-3/15-16, dated 22/06/2016 passed U/s. 271(1)(c) r.w.s. 250(6) of the Act for the AY: 2011-12.

2. The assessee has raised four grounds of appeal and two additional grounds which are extracted herein below for reference:-

Grounds of Appeal:-

- (1) *The order of the Appellate Commissioner is contrary to the law, facts and circumstances of the case.*
- (2) *The Appellate Commissioner ought not to have confirmed the penalty levied U/s. 271(1)(c).*
- (3) *The Appellate Commissioner ought to have considered the submissions made by the appellant before confirming the levy of penalty.*
- (4) *Any other grounds which the appellant may urge either before or at the time of hearing.*

Additional Grounds of Appeal:-

- (1) *The levy of penalty U/s. 271(1)(c) is bad in law and liable to be quashed as the Assessing Officer omitted to explicitly mention whether the penalty proceedings are being initiated or furnished of inaccurate particulars or that for concealment of income.*
- (2) *Any other grounds which the appellant may urge either before or at the time of hearing.”*

3. At the outset, Ld. AR submitted before us that there is a delay of 73 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought out attention towards the affidavit filed by the assessee seeking condonation of delay wherein the reason for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

“

7. *The reasons for delay of 73 days are as under:-*
 - a. *We had sent the order of our AR filing an appeal before the Hon'ble ITAT, Hyderabad.*
 - b. *That on enquiry from assessee's office, it found that the appeal was not filed as it involved a lapse on part of the AR in the issue of certificate, which led to the addition and subsequent levy of penalty.*

- c. *That the AR returned the file indicating that he would not be filing the appeal as there was a personal conflict of interest.*
- d. *All this took considerable time and the assessee immediately consulted another professional and filed the appeal. Thus, there was delay of 73 days.”*

4. After hearing the submissions of the Ld. AR and on perusal of the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before the Tribunal, We are of the view that the delay in filing appeal is not attributable to the assessee, hence taking a lenient view in the interest of justice, We hereby condone the delay of 73 days in the filing the appeal before the Tribunal and proceed to dispose off the appeal on merits.

5. The assessee has raised several grounds in its appeal however, the crux of the issue is that the Ld. CIT (A) has erred in confirming the order passed by the Ld. AO who had levied penalty of Rs. 32,99,764/- in the hands of the assessee invoking the provisions of section 271(1)(c) of the Act.

6. The brief facts of the case are that assessee is a private limited company engaged in software services, filed his return of income for the AY 2011-12 on 30/09/2011 claiming exemption U/s. 10A of the Act. Subsequently, order was passed U/s. 143(3) of the Act on 30/03/2014 accepting the return filed by the assessee. Thereafter, the Ld. CIT (A) invoking his powers U/s. 263 of the Act vide order dated

16/4/2015 set aside the assessment order on the issue of allowability of exemption U/s. 10A of the Act. When the matter cropped up before the Ld. AO once again, it was revealed that the assessee had already claimed deduction U/s 10A of the Act for the AY 2001-02 to 2010-11 and therefore, the assessee was not entitled to claim the exemption for the AY 2011-12. Accordingly, order was passed U/s. 143(3) r.w.s 263 passed on 25/02/2015 disallowing the claim of exemption U/s. 10A of the Act of Rs. 99,33,813/-. Thereafter, the Ld. AO initiated penalty proceedings and levied penalty in the case of the assessee relying on the decision of the Hon'ble Delhi High Court in the case of Zoom Communications reported in 327 ITR 510 and certain other decisions of the Tribunal. On appeal, the Ld. CIT (A) confirmed the order of the Ld. AO by agreeing with his view.

7. At the outset, the Ld. AR submitted before that it was an inadvertent mistake committed by the Chartered Accountant of the assessee. It was further submitted that though the assessee had completed ten consecutive years for claiming the exemption U/s. 10A of the Act, for four years the assessee could not claim the exemption as it had suffered losses. Therefore, the assessee's Chartered Accountant and the assessee were of the bonafide belief that the exemption could be claimed for another four years. The Ld. AR further pleaded that since the claim of the assessee was an inadvertent mistake based on a bonafide belief penalty levied in the hands of the assessee may be

deleted. The Ld. DR on the other hand, relied on the orders of the Ld. Revenue Authorities and requested for confirming the same.

8. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it appears that the mistake was committed in the return of income due to the peculiar circumstance as the assessee and its Counsel were under the bonafide belief that the entitlement for exemption was for ten years and not for ten consecutive years. However, during the period of consecutive ten years the assessee had incurred losses for four years and the assessee and its Counsel were under the belief that the exemption would be available for another four years. Further, it is also apparent that the assessee had not concealed the particulars of its income. It is also apparent that the inaccurate particulars of the income furnished in the return of income had occurred due to inadvertent mistake committed by the Chartered Accountant of the assessee. In this situation, we are reminded of the decision rendered by the Hon'ble Apex Court in the case of **CIT vs. Reliance Petroproduct (P.) Ltd., [2010] 189 Taxman 322 (SC)** wherein it was held as under:

“A glance of provision of section 271(1)(c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would

amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. [Para 7]

Therefore, it must be shown that the conditions under section 271(1)(c) exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed, because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. [Para 8]

The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was 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). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]

The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was argued that the falsehood in accounts can take either of the two forms: (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. Such contention could not be accepted as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10]

Therefore, the appeal filed by the revenue had no merits and was to be dismissed.

9. Considering the facts of the case, we are of the view that the ratio laid down by the Hon'ble Apex Court cited supra will be applicable in the case of the assessee. Therefore, in the interest of justice, we hereby

set aside the order of the Ld. CIT (A) and further direct the Ld. AO to delete the penalty imposed on the assessee for Rs. 32,99,764/- invoking the provisions of section 271(1)(c) of the Act.

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

Pronounced in the open Court on 17th September, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 17th September, 2020.

OKK

Copy to:-

1.	M/s. Synfosys Business Solutions Limited, 2 nd Floor, Rock Vista, Rock Dale Compound, Somajiguda, Hyderabad.
2.	Income Tax Officer, Ward-3(4), Hyderabad.
3.	The CIT (Appeals)-3, Hyderabad.
4.	The Principal Commissioner of Income Tax-3, Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard File.