

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 5028/Mum/2019
(A.Y: 2011-12)**

The ACIT- 3 (2) (1), Room No. 674, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	बनाम/ Vs.	M/s Lipi Data System Ltd., 1, Mittal Chambers, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL0916F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Brajendra Kumar, DR
प्रत्यर्थी की ओर से/ Respondent by :	None

सुनवाई की तारीख / Date of Hearing	09/02/2021
घोषणा की तारीख / Date of Pronouncement	11/02/2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) -8

Mumbai, passed u/s. 271 (1) (c) and 250 of the Income Tax Act, 1961.

2. The revenue has raised the following grounds of appeal:-

“1 . Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty of Rs.80,5551- without appreciating that the assessee failed to establish the genuineness of the transaction with respect to its nature and source of investment and therefore the AO was correct in holding the transaction of the assessee with M/s Dev Enterprises as bogus transaction?

2. Whether on the facts and circumstances of the case and in law,, the order of the Ld. CIT (A) is not perverse in stating in para 3.1.8 of his order that penalty levied u/s 271(1) (c) of the Act, 1961 is not maintainable in view of CBDT Circular No 25/2015 (F. No. 279/Misc/140120151ITJ dated 31.12.2015 without appreciating that for the year under consideration the income tax payable on total income was computed under normal provisions of the Act and not on Book profit u/s 115 JB of the Act?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty of Rs.80,5551- without appreciating that Hon’ble M P High Court in the case of Steel Infots Ltd vs. CIT (269 ITR 228) has held that in case of concealment of income chargeable to tax by making bogus claim, levy of penalty it Is 271(l)(c) read with Explanation 2 is justified and the decision of Hon'ble Delhi High Court in the case of CIT vs Escorts Finance Ltd (2010) (328 ITR 44) (Del) wherein it is held that in case of a claim made in return of income found to

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be bogus, it would be treated as a case of concealment or furnishing of inaccurate particulars of income and therefore penalty proceedings would be justified?

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in deleting the penalty of Rs.80,555/- levied u/s.271(1)(c) of the I.T. Act, 1961 without appreciating the fact that the claims made is not only incorrect in law but is also wholly without any basis and the explanation furnished by the assessee for making such a claim is not found to be bonafide triggering Explanation I to section 271 (1)(c) of the I.T. Act, 1961 as held by Hon'ble Delhi High Court in the case of Zoom Communications Pvt. Ltd., 40 DTR 249 (2010).

5. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

6. The appellant craves leave to amend, alter, delete or add grounds which may be necessary.”

At the time of hearing, none appeared on behalf of the assessee nor adjournment petition was filed. We heard the Ld. DR and perused the material on record.

3. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing of printers, ATM Machines and cartridge etc. The assessee has filed the return of income on 12.09.2011 declaring total income at Rs. 8,62,21,670/-and Book profit u/s

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115JB of Rs. 12,41,01,207/-. Subsequently, notice u/s 143 (2) and 142 (1) of the Act along with questionnaire were issued. In compliance the Ld. AR of the assessee appeared from time to time and furnished the details. The A.O. found that the assessee has obtained bogus purchases bills from the operators as per the information received from Sales Tax Department. The assessee was also served with the show cause notice, and the explanations were filed referred at para 5.2 of the order. Whereas, the AO was not satisfied with the explanations and observe that the assessee could not prove the genuineness of the purchases, hence made an addition of Rs 1,21,25,460/- of bogus purchases and disallowance u/s 14A of the Act Rs 1,00,186/- and assessed the total income ofRs.9,84,47,320/and passed the order u/s 143 (3) of the Act dated 26.03.2013.

4. Subsequently, the A.O. initiated penalty proceedings u/s 271 (1) (c) of the Act. In response to the notice, the assessee has explained that against the 100% addition of bogus purchases. On appeal by the assessee, the Ld. CIT(A) has restricted the addition @ 25% of Bogus Purchases. Further, on the appeal by the revenue as well as the assessee, the Hon'ble ITAT in the case of the

revenue appeal has directed the AO to restrict the addition by estimating further Gross Profit of 2% of bogus purchases. The assessee has filed explanations in the penalty proceedings, whereas the AO was not satisfied with the submissions and levied penalty of Rs.80,555/- and passed the order u/s 271 (1) (c) of the Act.

Aggrieved by the order, the assessee has filed an appeal with the CIT (A). The Ld. CIT (A) considering the facts and submissions of the assessee dealt on the dispute issue and relied on the judicial decisions and observed that the penalty is not sustainable on adhoc disallowances were the income is estimated and deleted the penalty and allowed the appeal of the assessee.

5. Aggrieved by the CIT(A) order, the revenue has filed the appeal before the Hon'ble Tribunal. At the time of hearing, Ld. DR submitted that the CIT(A) erred in deleting the penalty. We find the Ld.CIT (A) relied on the judicial decisions and observed at para 3.1.8 and 3.1.9 of the order, which is read as under:-

3.1.8 It is also found that the Board itself vide circular F No279/Misc/140/2015/ITJ dated 31/12/2015 has directed that

for a period prior to 01/04/16, no penalty is leviable with reference to the additions and disallowances made under normal provisions, where the Income Tax payable on the normal income is less than the book profits u/s 1 15JB. The same has been upheld as such by the Hon'ble Delhi High Court as well in the case of Nalwa Sons Investment Ltd. Thus , on these premises also, the penalty is not maintainable.

3.1.9 Concludingly, the tenets for determining concealment or furnishing of inaccurate particulars have been laid out in the above judgments. The principles laid down in the above mentioned judgments of the Apex Court and jurisdictional courts and the facts and circumstances of the instant case do not merit imposition of penalty u/s 271(1)(c) at all. Penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 of Rs. 80.555/- for alleged furnishing of inaccurate particulars is, therefore, deleted.

The Ld. DR could not controvert the observations of the Ld. CIT (A) with any cogent evidence or information. Accordingly, we find that the Ld. CIT (A) has passed a reasoned order and relied on the judicial decision. Accordingly, we do not find any infirmity in the order of the Ld.CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

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6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 11.02.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
Mumbai, Dated 11.02.2021

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

AK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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