

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5420/MUM/2019
(Assessment Year: 2013-14)**

M/s Unicon Accessories Pvt.
Ltd., 1st Floor, Sheela Niwas,
Ramabai Chemburkar Marg,
Vile Parle (East),
Mumbai – 400057

Income Tax Officer -11(1)(4)
Vs. 2nd Floor, Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai - 400020

PAN No. AABCU0104F

(Assessee)

(Revenue)

Assessee by : Shri Prakash K. Jotwani, A.R
Revenue by : Ms. Usha Gaikwad, D.R

Date of Hearing : 08/06/2021
Date of pronouncement : 11/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-18, Mumbai, dated 25.06.2019 which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 28.06.2018. The assessee has assailed the impugned order on the following grounds of appeal before us:

“On the facts and in the circumstances of case and in law

1. The Ld CIT (Appeals) erred in confirming the penalty levied u/s 271(1)(c) amounting Rs.1,36,000/- without appreciating the fact that the appellant had neither furnished inaccurate particulars of his income nor concealed his income.
2. The Ld CIT (Appeals) has erred in confirming the penalty levied u/s 271(1)(c) of the Act on deeming disallowance u/s 40 (a)(ia) of the Act amounting to Rs.4,40,000/- only for lack of payment of TDS while the payment was bonafide.

3. The Ld. CIT (Appeals) failed to consider that mere addition or disallowance could not be the basis for concealment as all the particulars relating to the additions or disallowance were part of record and as such there is no concealment or furnishing of inaccurate particulars of income.
4. The Ld. CIT (Appeals) failed to consider that notice issued by the A.O u/s 274 of the Act is defective for not mentioning the specific charge.
5. The Ld. CIT (Appeals) failed to consider that the notice issued u/s 274 has no clear specification on the charges i.e whether it is for concealing particulars or furnishing inaccurate particulars of income as there was no strike off and hence the notice as well as order is bad in law
6. The Appellant craves leave to add alter or amend the ground of appeal at or before the hearing of the appellant.”

Further, the assessee has also raised the following additional grounds of appeal:

“On the facts, and in the circumstance of the case and in law:

1. The learned AO erred in levying penalty u/s 271(1)(c) where in the show cause notice the relevant provision of concealment or filling of inaccurate particulars was not strike off and neither was the same specified in the assessment order.
2. The learned CIT (A) erred in confirming such a penalty order where there was no clear charge raised by the AO and suo motu assuming charge of furnishing of incorrect particulars of income.
3. The appellant craves leave to add, alter or amend the grounds of appeal at or before the hearing of the appeal.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2013-14 on 13.09.2013, declaring a loss of Rs.6,76,592/- under the normal provisions of the Act and “book profit” under Sec. 115JB of Rs.67,11,262/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was reopened under Sec. 147 of the Act.

3. Observing that the assessee had failed to deduct tax at source on commission expenditure of Rs.4,40,000/-, the A.O disallowed the said claim of deduction under Sec. 40(a)(ia) of the Act. After inter alia making the aforesaid disallowance the loss of the assessee company was assessed by the A.O vide his order passed under Sec. 143(3) r.w.s 147, dated 22.12.2017 at (-) Rs.2,25,840/-. Also, the A.O while framing the assessment had in the body of

the assessment order initiated penalty proceedings under Sec. 271(1)(c) of the Act.

4. After the culmination of the assessment proceedings, the A.O called upon the assessee to 'Show cause' as to why penalty under Sec. 271(1)(c) may not be imposed as regards the disallowance of its claim for deduction of commission expenses of Rs.4,40,000/-. In reply, the assessee tried to impress upon the A.O that no penalty u/s 271(1)(c) was called for in its hands. However, the A.O not finding favour with the reply filed by the assessee imposed a penalty of Rs.1,36,000/- for furnishing of inaccurate particulars of income u/s 271(1)(c), vide his order dated 28.06.2018.

5. On appeal, the CIT(A) finding no infirmity in the view taken by the A.O upheld the penalty that was imposed by him.

6. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset submitted that though the authenticity of the commission expenses had not been doubted by the A.O, however, the assessee had been saddled with penalty under Sec. 271(1)(c) on the standalone basis that the amount in question was disallowed under Sec. 40(a)(ia) of the Act. In support of his claim that no penalty under Sec. 271(1)(c) could justifiably be imposed on the basis of a simpliciter disallowance made in the hands of an assessee under Sec. 40(a)(ia), the Id. A.R relied on the order of a coordinate bench of the Tribunal in the case of, viz. Intercontinental Hotels Group India Pvt. Ltd. Vs. DCIT, Circle-7(1), New Delhi, ITA No. 2188/Del/2017, dated 27.03.2021. Apart from that, it was submitted by the Id. A.R that as the A.O had failed to strike off the irrelevant default in the body of the 'Show cause' notice, dated 26.12.2017, therefore, the penalty was liable to be vacated on the ground of invalid assumption of jurisdiction on the part of the A.O.

7. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncement that has been pressed into service by the Id. A.R to drive home his aforesaid contention. Admittedly, the assessee had been made to suffer penalty under Sec. 271(1)(c) as regards the disallowance u/s 40(a)(ia) of the assessee's claim for deduction of commission expenses. As observed by us hereinabove, the commission expenses have been disallowed not for the reason that the same were either found to be bogus or unsubstantiated, but, on the ground that de hors deduction of tax at source, the same, were liable to be disallowed under Sec. 40(a)(ia) of the Act. In sum and substance, the genuineness and veracity of the commission expenses in question had not been doubted by the A.O. In our considered view, though the failure on the part of the assessee to deduct tax at source which it was obligated to deduct rendered the amount in question liable for disallowance as an expenditure, but, we are unable to concur with the view taken by the lower authorities that a disallowance for such technical and venial infraction of a statutory provision would justify saddling the assessee with penalty under Sec. 271(1)(c) of the Act. At this stage, we are reminded of the judgment of the **Hon'ble Supreme Court** in the case of **Hindustan Steel Limited Vs. State of Orissa (1972) 83 ITR 26(SC)**, wherein the Hon'ble apex court had observed that imposition of penalty under Sec. 271(1)(c) is nothing short of a quasi criminal proceedings. In the backdrop of our aforesaid deliberations, we are of a strong conviction that no penalty under Sec. 271(1)(c) for a simpliciter disallowance under Sec.40(a)(ia) could have been validly imposed by the A.O. Be that as it may, not finding favour with the view taken by the lower authorities, we, herein, quash the penalty of Rs.1,36,000/- imposed by the A.O under Sec. 271(1)(c) of the Act. The **Grounds of appeal Nos. 1-3** are allowed in terms of our aforesaid observations

9. As we have quashed the penalty in terms of our aforesaid observations, we, thus, refrain from adverting to the validity of the jurisdiction assumed by the A.O for imposing penalty under Sec. 271(1)(c) as had been assailed by the Id. A.R before us, which accordingly is left open. The **Grounds of appeal Nos. 4 & 5** along with the additional ground of appeals are disposed off in terms of our aforesaid observations.

10. The **Ground of appeal No.6** being general is dismissed as not pressed.

11. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 11.06.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 11.06.2021

PS: Rohit

Copy of the Order forwarded to :

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

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai