

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 7225/Del/2017 : Asstt. Year : 2014-15

Peartree Enterprises Pvt. Ltd., C4/142, Safdarjang Development Area, New Delhi-110016	Vs	DCIT, Central-19(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCP8759Q		

Assessee by : None

Revenue by : Ms. Shivani Bansal, Sr. DR

Date of Hearing: 15.09.2021

Date of Pronouncement: 22.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-7, New Delhi dated 16.08.2017.

2. The AO levied penalty u/s 271(1)(c) on the additions/disallowances viz. Rs.11,479/- u/s 35D of the Act, Rs. 13,42,749/- for non-deduction of TDS on royalty and Bank Guarantee Commission of Rs. 2,14,850/- u/s 40(a)(ia) of the Act, Rs.7,24,186/- out of machinery running maintenance expenses, Rs.1,35,087/- u/s 40(A)(3) of the Act, interest on TDS of Rs.2,157/-, Rs. 19,343/- u/s 2(24)(x) read with Section 36(1)(v) of the Act and agricultural expenses of Rs.35,725/- made in the assessment order.

3. The assessee did not file appeal against the order. The AO levied the penalty as he held that the assessee did not furnish any supporting evidence that it had correctly computed the taxable income and had furnished inaccurate particulars of its income with a view to avoid imposition of tax due.

4. The Id. CIT (A) held that the disallowance u/s 2(24)(x) r.w.s. 36(1)(v), 40(a)(ia), interest on TDS, Section 40A(3) shall not attract the rigors of the provisions of Section 271(1)(c) of the Act and deleted the penalty levied under these heads.

5. However, the Id. CIT (A) confirmed the penalty levied u/s 271(1)(c) with reference to quantum addition arising out of disallowance of Rs. 11,479/- incurred for increase in authorized share capital, disallowance of Rs.7,24,186/- on account of unverifiable expenses out of expenditure claimed under the head machinery, running and maintenance.

6. While confirming the penalty, the Id. CIT (A) relied on the judgment of the Hon'ble Supreme Court in the case of K. P. Madhusudan vs. CIT, 251 ITR 99 wherein it was held that the onus is on the assessee to prove that he has not concealed or furnished inaccurate particulars of his income. Further, he relied on the judgment of the Hon'ble Apex Court in the case of UOI & Others vs. Dharmendra Textile Processors & Others 306 ITR 277 wherein it was held that the penalty is a civil liability and *mens rea* is not required to be established by the revenue. Similarly, on the judgment of Hon'ble Supreme Court in the case of CIT Vs. Atul Mohan Bindal (2009) 317 ITR 1 wherein it was held that penalty u/s 271(1)(c) is neither criminal nor quasi criminal but a civil liability, albeit a strict liability. Such liability

being civil in nature, *mens rea* is not essential. Explanation appended to section 271(1)(c) indicates element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return.

7. We find that the Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication (P) Ltd., 327 ITR 510 held that,

".....

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."

8. In the instant case, the disallowance on expenses relating to machinery maintenance have been disallowed owing to non-production of bills. The details of expenditure date-wise have been furnished to the AO and it pertains to purchase of spares & tyres for the machinery. The claim cannot said to be malafide or untenable as the purchase of tyres and spare parts are integral to the working of the machinery. The tyres have been purchased from Ajit Tyres Pvt. Ltd. and no inquiries have been made by the Assessing Officer to bring on record that the purchases indeed have not been entered into. The disallowance is made solely on the basis of non-production of bills. There is no material brought by the Assessing Officer. The declared loss of the assessee as per the return was Rs.42,28,25,590/-. Hence, keeping in view, the entire facts and since there is absence of

invocation of specific limb of penalty whether concealment or furnishing the inaccurate particulars u/s 271(1)(c) sought to be levied, either in the Assessment Order (last page of AO), or in the penalty order (para 4.3 & 10), or in the approval granted by the Addl. Commissioner (para 14), we hereby direct the penalty levied be obliterated.

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

Order Pronounced in the Open Court on 22/09/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 22/09/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR