

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER**

I.T.A. No.3331/DEL/2019  
Assessment Year: 2012-2013

Chetu India Pvt. Ltd., M-304, Dharma, Apartments, 2-I.P. Extension, Delhi.	vs.	Asst. CIT, Circle 6(1), Room No. 390, C.R Building, New Delhi.
PAN: AACCC4019N		
(Appellant)		(Respondent)

Appellant by:	Shri K.C. Singhal, Advocate		
Respondent by:	Shri Sumit Kumar Varma, Sr.D.R.		
Date of hearing:	09	12	2021
Date of pronouncement:	30	12	2021

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee company is directed against the order passed by Commissioner of Income Tax (Appeals)-II, New Delhi [for short "CIT(A)"] dated 31.01.2019, which in turn arises from the order passed by the Assessing Officer u/s.271(1)(c) of the Income Tax Act, 1961 [for short 'Act'] dated 31.01.2017 for the Assessment Year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us.

"1. That initiation of proceedings u/s 271(1)(c)/levy of penalty itself is bad in law in as much as the AO himself was not sure about the charge since the notice refers to concealment of income or furnishing of inaccurate particulars of income in terms of Explanation 1,2,3,4,and 5 while para 3 of penalty order refers to furnishing of inaccurate particulars of income within the meaning of Explanation-1 to S.271(1)(c) while penalty has finally been levied for furnishing of inaccurate

particulars of income without invoking Explanation mentioned above. This ground being purely legal be admitted in view of the decision of Hon'ble SC in case National Thermal Power Co Ltd 229 ITR 383 SC.

2. Without prejudice to above, the levy of penalty is illegal since the AO has not brought any evidence on record to substantiate his charge. He has not pointed out as to which particular of income was inaccurate. On the contrary, all the particulars of income were already on record.

3. Without prejudice to above, the mere rejection of a legal claim does not bring the case within the scope of section 271(1)(c) as held by various judicial decisions.

4. Without prejudice to above, the claiming of deduction u/s 10A was a sheer mistake on the part the while filing the return of income and the same was admitted voluntarily at the earliest point of time during the assessment proceedings by filing the revised computation of income. Such claim under a mistake does not amount to furnishing of inaccurate particulars of income as held by courts.

5. Without prejudice to above, the penalty cannot be levied on account of human error while computing the total income as held by the Hon'ble Apex Court.

6. The appellant craves to raise any other ground with the approval of the Hon'ble Tribunal.

3. Briefly stated, the assessee-company which is engaged in the business of software development and export had on 30.11.2012 e-filed its return of income for A.Y 2012-13, declaring an income of Rs.60,19,760/-. Original assessment was framed by the A.O vide his order passed u/s.143(3) r.w.s 144C of the Act, dated 31.01.2017 wherein the income of the assessee company was assessed at Rs.1,20,39,520/- after, inter alia, disallowing its claim for deduction of Rs. 60,19,760/- u/s.10A of the Act.

4. After culmination of the assessment proceedings, the AO vide his notice issued u/s 271(1)(c) called upon the assessee company to explain as to why penalty may not be imposed on it for furnishing of inaccurate particulars of income qua the raising of a wrong claim of deduction u/s.10A of the Act. In

reply, it was submitted by the assessee that as it was in the preceding years claiming and was being allowed the deduction u/s 10A of the Act, therefore, due to a *bonafide* mistake and oversight on its part it had inadvertently in its return of income for the year under consideration raised the claim for deduction under the aforesaid statutory provision. However, the AO being of the view that the assessee had failed to disclose the true and correct particulars of its income and, had intentionally raised a wrong claim for deduction u/s.10A of the Act for defrauding the revenue of its dues, saddled it with penalty of Rs. 19,53,111/- u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of its income.

5. Aggrieved, the assessee assailed the penalty imposed by the AO vide his order passed u/s. 271(1)(c) of the Act, dated 31.07.2017 before the CIT(A). Observing, that no infirmity did emerge from the view taken by the AO that the assessee had intentionally raised a wrong claim for deduction u/s.10A of the Act, the CIT(A) upheld the order of the AO and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset of the hearing of the appeal took us through the facts involved in the present case. It was submitted by the ld. AR, that the assessee had on account of a *bonafide* mistake raised a claim for deduction u/s.10A of the Act in its return of income for the year under consideration, i.e., AY 2012-13. In

order to buttress his aforesaid claim, it was submitted by the ld. AR that as the assessee was in the preceding years claiming and was being allowed the deduction u/s.10A of the Act, therefore, inadvertently on account of a mere oversight and a bonafide mistake it had raised the claim for deduction under the said statutory provision in its return of income for the year under consideration. In order to drive home his claim that the raising of the claim for deduction u/s 10A of the Act by the assessee company in its return of income for the year under consideration was prompted by a bonafide mistake, it was submitted by the ld. AR that the assessee in the course of the assessment proceedings on learning about its aforesaid mistake, on a suo motto basis i.e prior to detection of the mistake by the department, vide its letter dated 30.12.2014 had filed a revised computation of income with the A.O, wherein the claim for deduction u/s 10A of the Act that was raised in the return of income was voluntarily withdrawn. It was further submitted by the ld. AR, that though the AO had prior to the withdrawal of the claim for deduction u/s 10A by the assessee, vide its letter dated 30.12.2014, issued a notice u/s.142(1) of the Act, dated 15.09.2014, however, in the said notice no query as regards the assessee's entitlement for claim of deduction u/s.10A was ever raised by him. Backed by the aforesaid facts, it was submitted by the ld. AR that it was an uncontroverted fact that the assessee on realizing his mistake of having raised the claim for deduction u/s 10A of the Act in its return of income for the year under

consideration, had without any loss of time, on a suo motto basis i.e prior to detection of the said mistake by the department, filed a revised computation of income in the course of the assessment proceedings, wherein the claim for deduction u/s.10A of the Act that was raised in the return of income was withdrawn. It was further submitted by the ld. AR that the AO had thereafter framed the assessment vide his order passed u/s.143(3) r.w.s 144C, dated 31.01.2017, wherein the income returned by the assessee (subject to withdrawal of its claim for deduction u/s.10A) was accepted as such. Our attention was drawn by the ld. AR to the revised computation of income that was filed by the assessee company in the course of the assessment proceedings, Page 16 of the APB. Alternatively, it was submitted by the ld. AR that though the AO had initiated the penalty proceedings u/s 271(1)(c) of the Act, however, in the body of the “Show cause” notice (SCN), dated 31.01.2017 he had failed to strike off the irrelevant default, as result whereof the assessee had remained divested of an opportunity of putting forth an explanation as to why no penalty was liable to be imposed in its case. Our attention was drawn by the ld. AR to the ‘SCN’, dated 31.01.2017 that was issued by the A.O u/s. 274 r.w.s. 271 of the Act, dated 31.01.2017, Page 22 of APB. In the backdrop of the aforesaid facts, it was submitted by the ld. AR, that as the aforesaid mistake in raising the claim u/s.10A of the Act in the return of income by the assessee company was purely on account of *bonafide* reasons, therefore, no

penalty on the said count could have validly been imposed on it. In order to support his aforesaid contention reliance was placed by the ld. AR on the judgment of the Hon'ble Supreme Court in the case of CIT vs Reliance Petro Products Pvt. Ltd, 322 ITR 158 (SC). It was further averred by the ld. AR, that as no part of the information furnished by the assessee in its return of income was found to be wrong, therefore, no penalty u/s. 271(1)(c) for a mere *bonafide* mistake on the part of the assessee in raising the claim for deduction u/s 10A of the Act, which too was on a suo motto basis withdrawn by it in the course of the assessment proceedings by filing a revised computation of income, could have been validly imposed. It was further submitted by the ld. AR that as held by the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd. vs. CIT, 348 ITR 306 (SC), where an assessee on account a *bonafide* mistake had raised a claim, therein, no penalty u/s. 271(1)(c) on such standalone reason could validly be imposed on it. Also, in order to support his aforesaid contentions the ld. AR had relied upon the judgments of the Hon'ble Delhi High Court in the case of PCIT-8 vs. Samtel India Ltd. (2018) 96 taxmann.com 162 (Del) and CIT, Delhi vs. Madhu Shree Gupta (2013) 33 taxmann.com 286 (Del).

8. Per contra, the ld. Departmental Representative (for short 'DR') relied upon the orders of the lower authorities. It was submitted by the ld. DR that as the assessee has intentionally raised a wrong claim of deduction u/s.10A of the

Act, therefore, the lower authorities had rightly imposed/sustained the penalty u/s.271(1)(c) of the Act. In order to buttress his aforesaid claim, it was submitted by the ld. DR, that in case if there would have been a bonafide mistake on the part of the assessee in raising the claim for deduction u/s 10A of the Act, then, it would have filed a revised return of income, which, however, not having been so done, therein clearly revealed the *malafide* intention on its part in defrauding the revenue by raising a wrong claim of deduction in the return of income.

9. We have heard the ld. 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 pronouncements that have been pressed into service by them to drive home their respective contentions. Controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the assessee company which had in its return of income for the year under consideration wrongly raised a claim for deduction u/s.10A of the Act, having suo motto withdrawn the same in the course of the assessment proceedings by filing a revised computation of income i.e prior to detection of the mistake by the department, could therein justifiably be subjected to penalty u/s. 271(1)(c) of the Act? Admittedly, the assessee had in its return of income for the year under consideration raised a claim for deduction of Rs. 60,19,760/- u/s.10A of the Act. However, the assessee on realizing its aforesaid mistake, had

on 30.12.2014 i.e in the course of the assessment proceedings filed a revised computation of income with the A.O, wherein the aforesaid claim for deduction u/s.10A was withdrawn. As is discernible from the record, the AO had in the course of the assessment proceedings, vide his letter dated 25.01.2016, had in the backdrop of the revised computation of income that was filed by the assessee before him, therein, called upon it to file certain details, viz. furnish working of the claim for deduction u/s 10A of the Act as was claimed at the time of filing of the return of income; file 'Form 56F' that was issued by the accountant for the year under consideration i.e A.Y 2012-13, as well as that for the immediately preceding year; and to put forth an explanation as to why the claim of deduction u/s 10A be not disallowed and the revised computation of income may not be rejected. In reply, it was submitted by the assessee that it had already filed a revised computation of income in the course of the assessment proceedings, wherein the aforesaid claim for deduction u/s 10A of the Act that was raised due to a bonafide mistake was already withdrawn. At this stage, we may herein observe, that the AO was of the view that as a revised computation of income filed during the course of the assessment proceedings had no existence in the eyes of law, therefore, the filing of the same by the assessee on the basis of which it had withdrawn its aforesaid claim for deduction u/s.10A could not be given any weightage. Backed by the aforesaid facts, we find that the AO had thereafter imposed

penalty u/s. 271(1)(c) of the Act, vide his order dated 31.07.2017, for the reason that the assessee had furnished inaccurate particulars of its income qua the claim for deduction u/s.10A of the Act.

10. After deliberating at length on the issue under consideration, we are of the considered view, that as the assessee had admittedly vide its revised computation of income dated 30.12.2014, on a suo motto basis, withdrawn its claim for deduction u/s.10A of the Act, which as observed by us hereinabove was done prior to the detection of the said mistake by the AO, therefore, its *bonafides* qua the mistake in raising of the claim of deduction u/s 10A of the Act in its return of income stands established. Admittedly, as observed by the AO, and rightly so, a revised computation of income cannot be taken as a substitute of a revised return of income. However, we cannot remain oblivious of the fact, that the suo motto withdrawal of the aforesaid claim of deduction u/s.10A by the assessee by filing of a revised computation of income, at least cannot be lost sight of while deliberating upon the bonafides of the assessee qua the mistake of raising the aforesaid claim of deduction in its return of income.

11. In so far the circumstances leading to the aforesaid claim of deduction u/s.10A of the Act by the assessee are concerned, we find substantial force in its claim that as it had consistently been raising and was being allowed the aforesaid claim of deduction u/s 10A of the Act in the preceding years, therefore, due to a *bonafide* mistake the said claim for

deduction which though was no more available on the statute, was erroneously raised by the assessee in its return of income for the year under consideration. In the totality of the facts involved in the present case, we are of a strong conviction, that the very fact that the assessee having raised the claim for deduction u/s 10A of the Act, had thereafter, on a suo motto basis withdrawn the same i.e prior to detection of the said mistake by the department, though by filing a revised computation of income, in itself substantiates the bonafides of the assessee as regards its mistake in raising of such claim of deduction in its return of income for the year under consideration. Backed by the aforesaid facts, we are of the considered view, that the assessee qua raising of a wrong claim of deduction, which as observed by us hereinabove was beyond doubt prompted by *bonafide* reasons, could not have been subjected to penalty u/s. 271(1)(c) of the Act. Our aforesaid conviction is supported by judgment of the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. (supra). In its aforesaid order, it was observed by the Hon'ble Apex Court, that merely because a claim raised by an assessee is not accepted by the department would not on such standalone basis justify imposition of penalty u/s.271(1)(c) of the Act. Also, we are of the considered view, that a *bonafide* and an inadvertent error that had crept in the computation of income cannot justify saddling the assessee with penalty u/s. 271(1)(c) of the Act. Our aforesaid view is supported by the judgment of Hon'ble Supreme Court in the

case of Price Waterhouse Coopers Pvt. Ltd. (supra). In the backdrop of our aforesaid deliberations, we are unable to concur with the view taken by the lower authorities, and thus, quash the penalty of Rs.19,53,111/- imposed by the AO u/s. 271(1)(c) of the Act. The **Grounds of appeal no(s). 3 to 5** are allowed in terms of our aforesaid observations.

12. As we have in terms of our aforesaid observations quashed the penalty imposed by the A.O u/s 271(1)(c) of the Act, therefore, we refrain from adverting to the contentions advanced by the ld. AR qua the validity of the jurisdiction assumed by the AO for imposing the aforesaid penalty, which, thus, are left open. The **Grounds of appeal no(s).1 and 2** are disposed off in terms of our aforesaid observations.

13. The **Ground of appeal no.6** being general is dismissed as not pressed.

14. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the Open Court on 30<sup>th</sup> December, 2021

Sd/-

**[G.S. PANNU]**

**[PRESIDENT]**

DATED: 30/12/2021

\*Prabhat

Sd/-

**[RAVISH SOOD]**

**JUDICIAL MEMBER**