

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT & SHRI
KULDIP SINGH, JUDICIAL MEMBER**

ITA No.209/Del/2018
Assessment Year: 2002-03

Addl. CIT, Special Range-4, New Delhi.	Vs.	Hindustan Coca Cola Beverages Pvt. Ltd., 3 rd Floor, Orchid Centre, DLF Course Road, Sector 53, Gurgaon (Hr.)
PAN :AAACH3005H		
(Appellant)		(Respondent)

Revenue by	Shri J.K. Mishra, CIT(DR)
Respondent by	S/Shri Neeraj Jain & Aditya Vohra, Adv.

Date of hearing	02.02.2022
Date of pronouncement	.02.2022

ORDER

PER KULDIP SINGH: JUDICIAL MEMBER

Appellant, Additional CIT, Special Range-4, New Delhi (hereinafter referred to as 'Revenue') by filing present appeal sought to set aside the impugned order dated 13.10.2017 passed by the learned Commissioner of Income(Appeals)-42, New Delhi confirming the penalty levied by the Assessing Officer to the tune of Rs.18,74,19,661 under Section 271(1)(c) of the Income-tax Act, 1961 (for short "Act").

2. Briefly stated the facts necessary for adjudication of the controversy at hand are “on the basis of assessment framed under Section 143(3) of the Income-tax Act, 1961 at the total income of Rs.-2,62,96,57,525 by making disallowance of deduction claimed by the assessee on account of non-compete fee to the tune of Rs.47,71,42,665,” and on account of signages and ice boxes to the tune of Rs.8,99,15,261, written off initiated penalty proceedings under Section 271(1)(c) of the Act. Declining the contentions raised by the assessee, Assessing Officer levied a penalty of Rs.18,74,19661 @ 100% of the tax sought to be evaded under Section 271(1)(c) of the Act.

3. Assessee carried the matter before the learned Commissioner of Income-tax (Appeals) by way of filing the appeal who has deleted the penalty by accepting the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the learned authorized representatives of the parties to the appeal, perused the order passed by lower authorities in the light of facts and circumstances of the case and law applicable thereto.

5. Undisputedly, assessee has made claim in its return of income qua the deduction of “non-compete fee” and has also written off all the value of signages and ice boxes in full on the ground that the life of these products was short and no enduring benefit was acquired on the basis of it, on the basis of its audited financials. It is also not in dispute that quantum appeal filed by the assessee against the order passed by the Tribunal as lying admitted in the Hon'ble High Court.

6. In the backdrop of the aforesaid undisputed facts, the sole question arises for determination is:

“as to whether assessee company has furnished inaccurate particulars of income or has concealed particulars of its income during the course of assessment proceedings so as to attract penal provisions contained under Section 271(1)(c) of the Act.”

7. Learned Departmental Representative for the Revenue challenging the impugned order passed by the learned Commissioner of Income-tax(Appeals) relied upon the order passed by Assessing Officer and contended that since the assessee company has lodged inadmissible claim, it amounts to furnishing of inaccurate particulars sufficient to levy the penalty under Section 271(1)(c) of the Act.

8. However, on the other hand, learned AR for the assessee to repel the arguments addressed by learned Departmental Representative contended inter alia that during the course of assessment proceedings, assessee company has not furnished any inaccurate particulars during assessment proceedings rather made a bona fide claim on the basis of audited financials; that when quantum appeal is lying admitted in the Hon'ble High Court, penalty is not leviable; that no penalty is leviable on the basis of disallowance of “non-compete fee” and relied upon the decisions rendered by the Hon'ble High Court and co-ordinate benches of the Tribunal viz.

- 1) *CIT vs. Reliance Petroproducts Pvt. Ltd. : 322 ITR 158 (SC);*
- 2) *Dilip N. Shroff vs. JCIT: 291 ITR 519 (SC);*

- 3) *HCL Technologies Ltd. vs. DCIT: ITA No.3702/Del/2017 (Del Trib.);*
- 4) *PCIT vs. Harsh International (P) Ltd. 431 ITR 118 (Del.);*
- 5) *CIT vs. Nayan Builders & Developers: 368 ITR 722 (Del.);*
- 6) *CIT vs. Rahul Mehta: ITA No. 423/2011 (Del.)*
- 7) *CIT vs. Electrolux Kelvenatro Ltd. 357 ITR 665 (Del.);*
&
- 8) *CIT vs. Amtek Auto Ltd. 352 ITR 394 (P&H)."*

9. Undisputedly, assessee company has claimed a deduction of Rs.477,142,665 on account of "non-compete fee" amortized in its returns of income supported with computation sheet. When the claim lodged by the assessee company, in its return of income on the basis of its audited financials have been rejected by the lower authorities while taking different view than the assessee, no question of furnishing inaccurate particulars arises. Hon'ble Supreme Court of India has dealt with this identical issue in favour of the assessee in case of CIT vs. Reliance Petroproducts Pvt. Ltd. : 322 ITR 158 (SC) while turning following findings:

"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 proceedings 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 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). This is clearly not the intendment of the Legislature. [Para 10]".

10. Following the decision rendered in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. : 322 ITR 158 (SC) (supra), we are of the considered view that in this case, there was no occasion for the assessee to furnish in accurate particulars of its income who has lodged a bona fide claim qua the deduction and writing of the value of signages and ice boxes on the basis of its audited financials which has been rejected by the revenue authorities by taking different view and in these circumstances provisions contained under Section 271(1)(c) of the Act are not attracted. Assessing Officer has nowhere brought on record if assessee has furnished inaccurate particulars of income, at the most, the act of the assessee may be termed as "filing of incorrect claim" which does not attract the penal provisions contained under Section 271(1)(c) of the Act.

11. Furthermore, it is settled principle of law that when quantum appeal is admitted by the Hon'ble High Court by framing a question of law, as in the instant case, penalty under Section 271(1)(c) of the Act is not leviable as has been held by

Hon'ble Delhi High Court in cases of PCIT vs. Harsh International (P) Ltd.: 431 ITR 118 (Del.) and CIT vs. Nayan Builders & Developers: 368 ITR 665 (Del.)

12. Ratio of the aforesaid decisions relied upon by learned AR for the assessee is that when substantial question of law has been framed by the Hon'ble High Court in an appeal preferred by the assessee challenging quantum order, the issue has become debatable, the impugned penalty could not survive.

13. We have perused the order passed by the Hon'ble High Court in case of quantum of appeal filed by the assessee challenging the order passed by the Tribunal in which substantial question of law has been framed vide order dated 24.9.2015 in ITA No. 22/2015 as under:

- (a) *Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that expenditure incurred on account of non-compete fee paid to sellers of bottling business was not allowable revenue deduction; instead in treating the same as in the nature of capital expenditure?*
- (b) *Without prejudice and in the alternate, whether on the facts and in the circumstances of the case, the Tribunal erred in law in not allowing depreciation on the non-compete fee expenditure, held to be in the nature of capital expenditure.*
- (c) *Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that expenditure incurred towards ice boxes and dealer sign boards provided to hawkers/dealers, carrying the brand name of the appellant, was capital in nature?"*

14. So when Hon'ble High Court has framed substantial question of law in an appeal filed by the assessee challenging the quantum addition, penalty under Section 271(1)(c) of the Act is not leviable.

15. It is also a settled principle of law that in case of disallowance of "non-competence fee" by the lower revenue authorities below, penalty under Section 271(1)(c) of the Act is not leviable as has been held by the Hon'ble Delhi High Court in case of CIT vs. Electrolux Kelvinator Ltd. 357 ITR 665 (Del).

16. Hon'ble High Court of Delhi in case of Electrolux Kelvinator Ltd. (supra) held that "since the issue of allowance of "non-competence fee" as revenue expenditure or capital expenditure was debatable, the disallowance of assessee's claim could not be a ground to impose penalty under Section 271(1)(c) of the Act." So when issue as to allowance of non-compete fee as revenue expenditure or capital expenditure is debatable, penalty under Section 271(1)(c) is not leviable.

17. In view of what has been discussed above, we are of the view that Assessing Officer has failed to bring on record if assessee has furnished inaccurate particulars income at any stage of assessment proceedings, hence, the question framed in preceding para is decided in favour of the assessee. So finding no illegality or perversity in the impugned order passed by the learned Commissioner of Income-tax(Appeals) deleting the penalty levied

by Assessing Officer under Section 271(1)(c) of the Act, the present appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on .02.2022.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 7th February, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	02.02.2022
2.	Date on which the draft of order is placed before the Dictating Member:	07.02.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	07.01.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	08.02.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	