आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1405/CHNY/2015**

निर्धारण वर्ष /Assessment Years: 2006-07

M/s. Pentamedia Graphics Limited, "Taurus", 25, 1st Main Road, United India Colony, Kodambakkam, Chennai – 600 024. **PAN: AAACP1647B**	v.	**The DCIT,** Media Circle – I, Chennai - 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	: Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by	: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing	: 17.02.2022
घोषणा की तारीख/Date of Pronouncement	: 25.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-14, Chennai in ITA No.3/CIT(A)-14/2012-13 dated 23.03.2015. The Assessment was framed by ACIT, Company Circle V(4), Chennai U/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') for the A.Y. 2006-07

vide order dated 26.12.2008. The impugned penalty under dispute was levied by DCIT, Media Circle – I, Chennai u/s. 271(1)(c) of the Act, vide his order dated 29.03.2012 (the penalty under dispute).

2. At the outset, it is noted that the appeal is filed with a delay of 4 days. The assessee has filed condonation petition for condonation of delay stating the reasons that the assessee on receipt of the impugned order handed over the same and connected papers to its counsel for drafting of appeal. Immediately, the counsel have prepared the appeal papers and sent to the assessee for signing. But the authorised representative of the assessee was ill and could not attend office for few days. Immediately on his return to office, the appeal papers were processed and filed with a delay of 4 days. The ld.counsel further stated that the delay is neither wanton nor willful. When these facts were pointed out to the ld. DR, he did not raise any objection for condonation of delay. After hearing both the sides, we are of the view that the reason stated seems to be reasonable and hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming of levy of penalty u/s.271(1)(c) of the Act in regard to claim of deduction u/s.10B of the Act and Non application of provisions of Sec 50C while claiming carry forward of long term capital loss. For this, assessee has raised following 5 grounds :-

1. The Order of the Commissioner of Income tax (Appeals) dated 23.03.2015, confirming the levy of penalty u/s 271 (i) (c) of the Act of an amount of Rs.1,42,08,778/- u/s 271 (1) (c) is erroneous and contrary to law and facts of the case.
2. The Commissioner ought to have noted that the mandatory pre-condition for invocation of the statutory provisions i.e. furnishing of inaccurate particulars and concealment of income have not been established in the present case and thus vitiates the levy.
3. The Commissioner erred in not considering the fact that the claim of the Appellant is wholly based on an interpretation of the provisions of the Act. All relevant information has been furnished in the return of income. The levy of penalty is thus wholly unwarranted.
4. The Commissioner erred in concluding that the claims were malafide, lack good faith and 'some sort of deception was inherent'. This is wholly incorrect in so far as the claims u/s 10B as well as loss on the sale of property are in accordance with the statutory provisions and, in fact, such interpretation has been accepted by various Tribunals and High Courts.
5. The Commissioner erred in concluding that the Appellant did not offer any explanation for the additions made. This is incorrect in so far as detailed explanations and submissions were made before the AO as well as the CIT (A) and the levy of penalty is without reference to the same. This vitiates the levy in full.

4. Brief facts of the case are that the AO during the course of assessment proceedings, noticed that the assessee has claimed

exemption u/s.10B of the Act by filing Form 56G for an amount of Rs.4,15,05,170/-. He noted that auditor has remarked that out of the total repatriable amount of Rs.21,99,16,000/-, the assessee collected only a sum of Rs.21,21,000/-. The AO required the assessee to furnish evidence that it has received the entire export turnover to make it eligible to the claim of exemption to the tune of Rs.4,15,05,170/-. The assessee could not furnish any evidence for claim of exemption u/s.10B of the Act, thereby the AO restricted the claim of exemption to the extent of turnover repatriated at Rs.21,21,000/-. The AO initiated penalty proceedings u/s.271(1)(c) of the Act.

4.1 The AO noticed that the assessee has claimed loss on sale of property at Rs.36,27,586/-, which was restricted by the AO at Rs.29,20,102/- by applying the provisions of section 50C of the Act. The AO initiated penalty on this issue also. Aggrieved, assessee preferred appeal before CIT(A) and the Tribunal. The quantum addition is confirmed by CIT(A) as well as by the Tribunal and it has become final.

5. The AO issued notice u/s.274 r.w.s 271(1)(c) of the Act for levy of penalty on the assessee's claim of exemption u/s.10B of

the Act and also on excess claim of carry forward of Long Term Capital Loss claimed at Rs.7,07,484/-. The assessee replied before AO that various claims made in the return of income are based on interpretation of provisions of the Act but actually assessee has not filed any inaccurate particulars of income or not concealed the particulars of income as mandated in provisions of section 271(1)(c) of the Act. But the AO has not accepted the explanation of the assessee and levied penalty on both the grounds by observing in para 5 as under:-

> "5. The assessee's reply has been carefully considered and not acceptable for the following reasons:
>
> 5(a) Assessee's claim of exemption u/s.10B of the Act:
> The assessee's claim of exemption at Rs.4,15,05,170/- is erroneous especially when the assessee is aware that in order to claim exemption u/s.10-B the assessee should receive / repatriate the export receipts claimed at Rs.21,99,16,000/- and whereas the assessee had received only a meager sum of Rs.21,21,000/-. Therefore, the assessee has failed to disclose its true and correct income and also filed inaccurate particulars of its income, by claiming erroneous claim u/s.10-B. In my opinion, this act of the assessee attracted penalty proceeding contemplated u/s.271(1)(c) of the Act.
>
> 5(b) Excess claim of carry forward of Long Term Capital Loss of Rs.7,07,484/-
> The assessee has made wrong claim of carry forward of Long Term Capital Loss without considering the provisions of section 50-C and thereby failed to furnish the true and correct income and also filed inaccurate particulars of its income which attracts penalty u/s.271(1)(c) of the Act.

> 6. The case law relied on by the assessee is factually not applicable to this case as the assessee having full knowledge about the provisions of the Act has made erroneous claim and thereby failed to furnish its correct income and also filed inaccurate particulars."

6. Aggrieved, the assessee came in appeal before CIT(A). The CIT(A) also confirmed the action of the AO despite various explanation given by the assessee. Aggrieved, now assessee is in second appeal before the Tribunal.

7. We have heard ld.counsel for the assessee and the ld.Senior DR. The ld.counsel for the assessee before us claimed that the disallowance of assessee's claim of exemption u/s.10B is on the basis of interpretation of provisions of section and particularly insertion of sub-section 11A as inserted into section 155 of the Act, w.e.f. 01.07.2006 and he referred to the same which reads as under:-

> 155…….
> (11A) Where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 10A or

> section 10B or section 10BA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India

The ld.counsel explained that this is a matter of interpretation and nothing else. Hence, penalty cannot be levied.

8. On the other hand, the ld.senior DR heavily relied on the orders of the lower authorities and argued that the assessee has filed wrong particulars of income.

9. Having heard rival contentions and going through the case records, we noted that the AO levied penalty u/s.271(1)(c) of the Act on the following two items:-

a) Disallowance of assessee's claim of exemption u/s.10B and
b) Non application of provisions of Sec 50C while claiming carry forward of long term capital loss.

9.1 As regards to disallowance u/s.10B of the Act, the contention of the assessee was that as and when the assessee realizes foreign exchange there would be an upward revision of deduction allowed u/s.10B of the Act. The ld.counsel explained that the assessee has filed not to the effect, to claim this deduction along with return of income of the respective assessment years, that the time limit

mentioned in section 155(11A) of the Act, is 4 years from the end of the financial year in which such income is received in India. He explained that there is no outer limit or sunset close. To cover up this situation, the assessee's claim was that the eligible deduction u/s.10B of the Act has been claimed in the return of income duly certified by the auditor vide his audit report dated 27.11.2006 and that was also much after the insertion of sub-section 11A of section 155 of the Act. We noted that the argument of the ld.counsel for the assessee is convincing for the reason that if not claimed in the return of income of this year and assessee will not be able to make additional claim (except where the time limit for filing of revised return is available), when forex proceeds are actually received. The intention explained by ld.counsel of bringing the provision sub-section 11A of section 155 of the Act seems reasonable. We also noted that allowable deduction has been quantified by the AO in the assessment order and treated the difference as income of the assessee and rightly so. But whether this tantamount to concealment of particulars of income or furnishing of inaccurate particulars of income leading to concealment of income for which AO levied penalty u/s.271(1)(c) of the Act. The ld.counsel for the assessee before us explained the distinction between eligible deduction and allowable deduction which has lost sight of both the

authorities below but according to us, if the Revenue will treat this deduction like this then the results will be absurd but this in any way cannot be treated as concealment of particulars of income or furnishing of inaccurate particulars of income leading to levy of penalty u/s.271(1)(c) of the Act.

9.2 Another aspect of this issue is that the assessee has declared the eligible deduction and claim u/s.10B of the Act as per return of income and Form No.56G on the proceeds received during this year amounting to Rs.21,21,000/- but in the computation of income, the assessee has claimed the entire deduction for the reason of interpretation of provision of section 155(11A) of the Act. The AO, based on the details furnished in the return of income quantified allowable deduction amounting to Rs.21,21,000/- instead of the total deduction of Rs.4,15,05,170/-. We noted that none of the particulars required were concealed or furnished inaccurate particulars or suppressed figures. We noted that the AO in assessment order has noted this fact in Para V.1 which reads as under:-

> "V.1 The assessee has filed Form 56G along with the return claiming exemption u/s 10B to the tune of Rs.4,15,05,170/-. However, the auditor has remarked that out of the total repatriable amount of Rs.21,99,16,000/-, the assessee has collected only Rs.21,21,000/-. During the course of assessment proceedings, the assessee's Authorised Representative was

> specifically required to furnish evidence for having received the entire export Turnover to make it eligible for the claim of 10B exemption to the tune of Rs.4,15,05,170/-. As the assessee could not furnish the evidence thereof, the 10B exemption claimed is restricted to the extent of turnover repatriated i.e., Rs.21,21,000/-. The 10B exemption is reworked as Annexure.

10. We noted that the disallowance u/s.10B of the Act was made only due to interpretation of law and this cannot be a case of penalty proceedings u/s.271(1)(c) of the Act. This is because unless the assessee claims the deduction in the return of income, the AO can disallow the same and allow it later u/s.155 (11A) of the Act as and when it is actually received. Here, the assessee has relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts P. Ltd, 322 ITR 158 and ld.counsel particularly referred to para 10 which reads as under:-

> "10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be 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. We do not agree, 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, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

11. As regards to the addition made by AO by invoking the provisions of section 50C of the Act, i.e., fair market value of property as per the circle rates or the stamp duty valuation rates, ie., the deemed income and only a notional additional. The ld.counsel for the assessee relied on the Co-ordinate Bench decision in the case of ACIT vs. N. Meenakshi in ITA No.508/Mds/2008, order dated 13.02.2009, wherein exactly on identical situation, the penalty was deleted and the relevant finding of Tribunal in para 12 is as under:-

> "12. A reading of the above makes it clear that the section is applicable in cases where stamp duty has been paid for transfer. Moreover, this section also postulates that the fair market value may be different from the value adopted by the registration authority and in such cases, procedure for reference to valuation cell is provided. Hence, this section is neither applicable nor it is the case of the Revenue that any reference to valuation cell has been made or that the AO has obtained independent instances of comparable sales in that period, of that area."

11.1 The facts being identical on this issue also, we are of the view that there is no issue of concealment in this because the

assessee has not furnished inaccurate particulars of income or concealed particulars of income.

12. Hence, on both the counts, the assessee is not liable for levy of penalty u/s.271(1)(c) of the Act ad we delete the same. The orders of the lower authorities on this issue are reversed and appeal of the assessee is allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 25th February, 2022 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 25th February, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त /CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF.