

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 4668/DEL/2018 (A.Y 2014-15)

M/s Harsh International Industries Pvt. Ltd. RZ-17, First Floor, Gagan Building, Indra Park, Uttam Nagar, New Delhi-110059 PAN No. (APPELLANT)	Vs	DCIT Circle 11(1) New Delhi (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Mithun Shete, Sr. DR

Date of Hearing	14.03.2022
Date of Pronouncement	16.03.2022

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is preferred by the assessee against the order dated 01/05/2018 passed by the CIT (A)-4, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

1. *“That on the facts and circumstances of the case and in the Law, the penalty u/s 271(1)(c) as imposed by AO and confirmed by CIT(A) is bad in law and deserves to be quashed.*
2. *That on the facts and circumstances of the case and in the law the penalty u/s 271(1)(c) as imposed by AO and confirmed by CIT(A) is bad in law as the penalty notice u/s 271(1)(c) does not*

specifies as to whether penalty proceedings are initiated for concealment of income or furnishing of inaccurate particulars rendering the penalty levy void ab initio on this ground itself as per the mandate from several decisions, interalia, from High Court & Supreme Court.

3. *That on the facts and circumstances of the case and in the law the CIT(A) has grossly erred in confirming the penalty u/s 271 (1)(c) on the addition of Rs. 10,01,990 on account of miscellaneous balances written off.*

That the appellant craves leave to Add to and/or Amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”

3. At the time of hearing, no one appeared on behalf of the assessee, even no application for seeking adjournment of the appeal has been filed. Despite giving several notices, the assessee and his representative have failed to appear before the Tribunal. Therefore, we are constrained to decide the appeal on the basis of materials available on record after hearing the Ld. Sr.DR.

4. The brief facts of the case are that, the assessee Company is engaged in the business of manufacturing of tobacco product. The assessee filed its return of income declaring loss of Rs. 2,78,16,866/-. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued, again notice u/s 142(1) of the Act along with questionnaire was issued. The assessee was duly represented before the A.O and filed requisite details.

5. The assessment order has been passed on 30/11/2016 by computing the total income of the assessee as under:-

<i>Loss as per ITR</i>	<i>2,78,16,866</i>
<i>Additions:-</i>	
<i>1. Disallowance of Penalty paid</i>	<i>35,169</i>
<i>2. Disallowance of Sales tax paid for non receipt of C-form</i>	<i>5,74,769</i>
<i>3. Disallowance of Sundry Balances Written Off</i>	<i>10,01,990</i>
<i>Total Loss</i>	<i>2,62,04,938</i>
<i>Rounded Off</i>	<i>2,62,04,940</i>

6. Consequent to the Assessment Order, penalty order u/s 271(1)(c) of the Act was passed on 25/05/2017 on the ground that, the assessee has furnished inaccurate particulars of income by claiming penalty paid Rs. 35,169/-, sales tax demand of Rs. 5,74,769/- and Sundry Balance return of Rs. 10,01,990/- as business expenditure accordingly, computed the 100 % penalty u/s 271(1)(c) of the Act at Rs. 3,21,000/-.

7. As against the penalty order dated 25/05/2017 passed u/s 271(1)(c) of the Income Tax Act, the assessee has preferred an appeal before CIT(A)-4. The CIT(A) vide order dated 01/05/2018 deleted penalty levied for disallowance of penalty amount of Rs. 35,169/- and payment of sales tax amounting to Rs. 5,74,769/-, but sustained penalty levied pertaining to miscellaneous balance written off amounting to Rs. 10,01,990/-.

8. Aggrieved by the order dated 01/05/2018 passed by CIT(A), the assessee has preferred the present appeal on grounds narrated above.

9. On going through the records, we found that, the Ld. AO has passed penalty order u/s 271(1)(c) of the Act under three counts i.e. disallowance of penalty paid of Rs. 35,169/-, disallowance of payment of sales tax amounting to Rs. 5,74,769/- and the disallowance pertaining to miscellaneous balance written off amounting to Rs. 10,01,990/-. In the appeal, the Ld. CIT(A) by relying on law laid down in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC), deleted the penalty levied for disallowance of penalty amount of Rs. 35,169/- and payment of sales tax amounting to Rs. 5,74,769/-, but

sustained penalty levied pertaining to miscellaneous balance written off amounting to Rs. 10,01,990/- vide order impugned.

10. It is the case of the assessee before the AO is that, the sundry balance written off was in the nature of discount allowed to the customer. In so far as disallowance Sundry Balance written off, the assessee who has participated in the proceedings has submitted as under:-

“The same was of the nature of discount allowed to the customer, since the amount was not recovered and pending for long. Therefore the management decided to forbid the amount in order of keep these customers satisfied.”

The above said explanation provided by the assessee has not been accepted by the AO, which ultimately resulted in passing penalty order u/s 271(1)(c) of the Act.

11. The Hon'ble Supreme Court in the case of CIT vs. Reliance Petro products Ltd. (2010) 322 ITR 158 (SC) has observed as under:

“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 provision 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, there 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). That is clearly not the intendment of the Legislature. [Para 10] (Emphasis supplied)."

In Reliance Petro Products Ltd. (supra), the Hon'ble Supreme Court emphasized that, mere making of a claim of deduction which was not allowable by itself would not amount to furnishing inaccurate particulars of income. In fact, every legal disallowance under the provisions of the Act could not lead to the conclusion that, there was furnishing of inaccurate particulars of income on the part of the assessee. Though the CIT (A) followed the above Judgment of the Supreme Court in deleting the 2 penalties, but sustained the penalty levied pertaining to miscellaneous balance written off amounting to Rs. 10,01,990/- on the ground that the said receivable outstanding has been debited to the profit and loss account.

12. It is seen from the order of the AO and CIT(A) that, there is no specific finding in so far as 'concealment of income' and 'furnishing of incorrect particulars by the assessee' in the true meaning of Sec. 271(1)(c) of the Act. On the other hand, in our opinion, debiting an amount of Rs. 10,01,990/- on account of Sundry balance written off in profit and loss account, which was claimed to be in the nature of discount allowed to the customer of the assessee, since the said amount was not recovered and pending for loss and which ultimately disallowed by the AO, cannot attract "concealment of income" and "furnishing of inaccurate particulars of income". The ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro products Ltd. (2010) 322 ITR 158 (SC) (supra) is squarely applicable in favor of the Assessee.

13. For the above said discussion and reasons, we allow the grounds of appeal of the assessee, set aside the order passed by the A.O and CIT(A) in penalty proceedings.

14. In the result, the appeal of the assessee is allowed ex-parte.

Order pronounced in the Open Court on this 16th Day of March, 2022

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 16/03/2022
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

