

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1548/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Stera Engineering India Pvt. Ltd., No.26B, Bharati Vilas, Jawaharlal Nehru Salai, Ekkaduthangal Guindy, Chennai – 600 032.	बनाम/ Vs.	ACIT Corporate Circle-6(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAMCS-4563-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Kumar (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	24-03-2022
घोषणा की तारीख / Date of Pronouncement	:	24-03-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 26-02-2019 in the matter of penalty levied by learned Assessing Officer u/s 271(1)(c) for Rs.40 Lacs vide order dated 31.05.2018. The assessment was framed by Ld.

Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 27.11.2017.

The grounds raised by the assessee read as under:

1. The order of the Commissioner of Income Tax (Appeals) is opposed to the facts and circumstances of the case and settled law.
2. The Commissioner (Appeals) erred in upholding the penalty of Rs.40,00,000/- levied on the appellant company u/s 271(1)(c) of the Act r. w. Explanation 4(b) for alleged furnishing of inaccurate particulars of income.
3. The authorities below failed to see that the Foreign Exchange fluctuation loss of Rs.1,16,63,680/- disallowed in the (re) assessment order (dt.27.11.2017) was a part of the loss of Rs.2,10,84,399/- on that account included under 'Finance Cost', complete details of which had been furnished to the assessing officer in the course of the regular assessment proceedings as well as in the reopened assessment proceeding and there was as such no suppression of facts on the part of the appellant company.
4. The authorities below further failed to see that its claim (of Rs. 1,16,63,680/-) amidst other admissible revenue expenditure was unintentional and bonafide and does not warrant levy of penalty u/s 271 (1) (c) of the Act.
5. The Commissioner (Appeals) erred in not following the ratio of the Judgment of the Supreme Court in CIT Vs Reliance Petroproducts Pvt. Ltd., (2010) 322 ITR 158 (SC) holding that "A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to furnishing inaccurate particulars".
6. The Commissioner (Appeals) erred in not noting that the Judgment of the Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd., Vs CIT (2012) 348 ITR 306 (SC) cited before him also supports the present appellant's case.
7. The Commissioner (Appeals) has grossly erred in observing that the above decisions relied on by the appellant are not applicable to the facts and circumstances of the appellant's case without setting out his reasoning for the said finding & conclusion.
8. The appellant respectfully submits that the impugned levy of penalty is unjustified and deserves to be cancelled.
9. For these and other grounds that may adduced at the time of hearing the appellant prays that the Hon'ble Tribunal be pleased to allow the appeal and render justice.

2. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

3. The facts leading to imposition of penalty are that the assessee was subjected to reassessment proceedings for the year under consideration. The same was on the allegation that the assessee

claimed deduction of loss in foreign currency transaction for Rs. 210.84 Lacs. The same, in the opinion of Ld. AO, was capital in nature and therefore, the same would not be allowed to the assessee. The original return was already scrutinized u/s 143(3) on 26.03.2015 assessing the loss of Rs.910.05 Lacs. Though the assessee defended its claim, however, after considering assessee's submissions, the Ld. AO disallowed an amount of Rs.89.40 Lacs since the same was held to be capital loss. The claim also included a sum of Rs.27.23 Lacs being loss on allotment of shares on conversion of ECB which was also held to be capital in nature. Accordingly, both the items were added to the income of the assessee and the assessed loss was reduced to Rs.793.41 Lacs.

4. Consequently, penalty proceedings were initiated against the assessee for furnishing of inaccurate particulars of income. The Ld. AO, relying on the decision of Hon'ble High Court of Delhi in **CIT V/s Zoom Communication Ltd. (ITA No.07/2010 dated 24.05.2010)** levied a penalty of Rs.40 Lacs.

5. During appellate proceedings, the assessee submitted that it did not conceal any particular of income or furnished inaccurate particulars of income since full particulars were furnished by the assessee during original assessment proceedings as well as during reassessment proceedings. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **CIT V/s Reliance Petroproducts Pvt. Ltd. (322 ITR 158)** which held that mere making of wrong claim do not amount to furnishing of inaccurate particulars of income. In the absence of finding that any details supplied by the assessee is incorrect or false, penalty could not be levied. The Ld. AO must prove that there was concealment of income or the return of income furnished by the assessee or

documents submitted by assessee were based on incorrect fact, falsity and untruth.

However, rejecting the same, Ld. CIT(A) held that the assessee made wrong claim of deduction which would justify the imposition of penalty. Accordingly, the penalty was confirmed against which the assessee is in further appeal before us.

6. Upon due consideration of material facts, it could be observed that the assessee was a loss-making entity. The original return was scrutinized u/s 143(3) wherein the loss was determined at Rs.910.05 Lacs which has been reduced to Rs.793.41 Lacs in the reassessment proceedings. Nevertheless, ultimately the assessee has been assessed at a loss only. The same would be a good ground for the assessee not to contest the quantum addition which is one of the pleas of Ld. AR.

7. Another aspect to be noted is that the assessee has made a claim in the return of income. However, the claim has been classified as capital loss. The same is not held to be non-genuine. Therefore, it is a case where the assessee made a claim in the return of income which has not been accepted by the revenue. In such a case, the ratio of decision of Hon'ble Supreme Court in the case of **CIT V/s Reliance Petroproducts Pvt. Ltd. (322 ITR 158)** was squarely applicable to assessee's case. In this decision, it has been held by Hon'ble Court that mere making of wrong claim do not amount to furnishing of inaccurate particulars of income. In the absence of finding that any details supplied by the assessee is incorrect or false, penalty could not be levied. The Ld. AO must prove that there was concealment of income or the return of income furnished by the assessee or documents submitted by assessee were based on incorrect fact, falsity and untruth. Therefore, it is not a fit

case for imposition of penalty. By deleting the same, we allow the appeal.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 24th March, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 24-03-2022
EDN/-

आदेश की प्रतिलिपि ँ प्रेषित/Copy of the Order forwarded 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