

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 1872/MUM/2021 (A.Y: 2011-12)**

M/s. Rinira Technologies Pvt. Ltd., 110, Shiv Ashish, 66-S.V. Road Andheri (W), Mumbai - 40058  <b>PAN: AADCR7702C</b>	v.	Income Tax Officer – 11(1)(2) Room No. 202, 2 <sup>nd</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Bharat Shah</b>
<b>Department by</b>	:	<b>Shri Bharti Singh</b>
<b>Date of Hearing</b>	:	<b>07.04.2022</b>
<b>Date of Pronouncement</b>	:	<b>27.04.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals) – 18, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.01.2020 for the A.Y. 2011-12.
2. At the time of hearing, it was submitted that assessee has filed this appeal with a delay of 564 days in filing of the appeal and it was submitted

that this is due to COVID-19 Pandemic and also there was certain issue with new portal of Income Tax Department which was not functioning for the last four months. In this regard assessee also filed an affidavit. Ld.DR agreed that there is a disturbances in filing of various cases due to COVID-19 pandemic. After considering the submissions of both the parties, we condone the delay and admit the appeal for adjudication.

**3.** Aggrieved with the order of the Ld.CIT(A) assessee has preferred an appeal before us raising following grounds in its appeal: -

*"1. The learned Assessing Officer has erred In levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 on the ground that the validity of penalty order passed by the learned Assessing Officer u/s.271(1)(c) of the Act is bad in law and void ab initio as the notice issued u/s 274 r.w.s. 271(1)(c) of the Act Is not in accordance with the law especially since he has grossly erred in not specifying the limb under which he intends to initiate penalty proceedings.*

*2. The learned Assessing Officer has erred in levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 on the ground that the validity of penalty order passed by the learned Assessing Officer u/s 271(1)(c) of the Act is bad in law when the limb under which the penalty is initiated as per assessment order and penalty levied as per penalty order differs. Hence the penalty order passed is not in accordance with the law especially since he has grossly erred in levying the penalty as per provisions of law and as per various judicial pronouncements.*

*3. The CIT Appeals has erred in confirming penalty to the extent of 100% of tax amount when the claim u/s 10B of the Income Tax Act was a bonafide claim made while filing income Tax Return. The claim u/s 10B is not allowed by the learned assessing officer. Mere disallowance of claim made cannot be a case of Either Concealment of Income or Furnishing of Inaccurate particulars of Income. Hence*

*it is prayed that penalty sustained by CIT Appeals be cancelled and just and proper relief be granted to the assessee in this respect.*

*4. The Appellant prays to be allowed to add, amend, modify, rectify, delete, raise any ground of appeal before or at the time of hearing*

*Prayer/Relief, claimed*

*1. To quash the penalty order u/s 271 (1)(c)*

*2. To delete the penalty u/s 271 (1)(c) wrongly sustained, by, CIT-Appeals*

*3. Any other relief as deemed fit in circumstances of the case."*

**4.** At the time of hearing, Ld. AR brought to our notice Page No. 1 of the Paper Book to indicate that the show cause notice issued u/s. 274 r.w.s. 271(1)(c) of the Act is not proper in which Assessing Officer has not highlighted on which ground the penalty was initiated, whether on furnishing inaccurate particulars of income or concealment of income. Further he brought to our notice finding of the Assessing Officer in the Assessment Order in Para No 14 in which Assessing Officer has indicated that assessee has furnished inaccurate particulars of income and accordingly, penalty proceedings will be initiated separately. On the other hand, Ld. AR brought to our notice penalty order dated 23.02.2016 in which the penalty was levied for concealment of income. Therefore, he submitted that the Assessing Officer is not clear on what basis he has initiated the penalty proceedings. In the Assessment Order, he stated that the penalty proceedings is initiated separately on furnishing of

inaccurate particulars whereas the penalty order is passed on concealment of income. Further he stressed that penalty notice is also defective in this regard. He relied on the Hon'ble Bombay High Court in the case of Mohd Farhan A shaik [Taxmann.com 253 (Bombay) 2021) 280 Taxmann].

**5. On merit Ld. AR submitted as under: -**

*"During the previous year relevant to A Y 2011-12 the appellant company derived its income from 100% export oriented services rendered and filed its return of income on 30/09/2011 claiming exemption u/s 10B of the Income Tax Act.*

*After the filing of income tax return on 30/09/2011 the decision of the Hon Delhi High Court in another case CIT vs Regency creations Ltd(2012) 27 Taxmann 322 was available in which the Hon Delhi High Court held on 17/09/2012 that for claiming deduction u/sec 10B in respect of 100% EOU it should be approved by Central Government through the appropriate authority constituted u/sec 14 of the Industries 9 Development and Regulation) Act and if the 100% EOPU is approved only by the Director STPI it would not be a valid approval. Hence the exemption u/sec 10B was denied due to event of decision delivered by Hon Delhi High Court in the case of CIT vs Regency creations Ltd (2012) 27 Taxman 322.*

*It is pertinent to note that the Delhi High Court decision was made available on 17/09/2012 i.e. after filing of return on 30/09/2011 for relevant assessment year 2011-12. And also it is submitted that as the appellant company had satisfied all other conditions the deduction u/sec 10B was allowed in the previous two assessment years i.e Assessment Year 2009-10 and 2010-11. Hence at the time of filing of income tax return for Assessment Year 2011-12 the assessee had made bona fide claim of deduction u/s 10B keeping in mind the previous track record of deduction. There was no new facts or additional information available with the assessee for not claiming of deduction u/s 10B. Only after almost one year the Hon Delhi High*

*Court added the condition as mentioned above to avail the benefit of Sec 10B.*

*Now it is well settled law that mere disallowance of bona fide claim made and afterwards the same is disallowed then it will not be either furnishing of inaccurate particulars of Income or concealment of income which are the two basic ingredients for levy of penalty u/s 271(1)(c) of the Income Tax Act.*

*Sir I have given various case laws to substantiate my submission. The leading case is Reliance Petro products Pvt Ltd Supreme Court in this connection.*

*Sir I have submitted legal compilation containing 81 pages on technical as well as on facts/merits and relevant portion is highlighted for your kind perusal. Kindly consider the same."*

**6.** On the other hand, Ld.DR relied on the orders passed by the lower authorities.

**7.** Considered the rival submissions and material placed on record, we observed that the penalty was levied on the basis of concealment of income but we observed that the penalty notice u/s. 274 r.w.s. 271(1)(c) of the Act is issued without indicating on what basis the penalty proceedings was initiated. Normally, we fall back in such situation to the Assessment Order in which Assessing Officer normally indicate on what basis penalty proceedings will be initiated. In this case we observed that in Assessment Order Assessing Officer has indicated that penalty proceedings will be initiated on the basis of furnishing of inaccurate particulars of income whereas we observed that the penalty was levied

ultimately on concealment of income. It clearly shows that Assessing Officer is not clear on what basis the penalty proceedings were initiated and completed. The facts are clearly falls under the category of issue of improper notice. Respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Mohd Farhan A Shaikh (supra) in which the penalty proceedings initiated based on the improper notice is bad in law. Accordingly, penalty levied by the Assessing Officer is accordingly, deleted.

**8.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 27.04.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**