

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5345/DEL/2017
Assessment Year 2011-12

Gulshan International Pvt. Ltd., C-2/47, Phase-II, Ashok Vihar, New Delhi.	v.	ACIT, Circle-10(2), New Delhi.
TAN/PAN: AABCG1201H		
(Appellant)		(Respondent)

Appellant by:	Shri A.T. Panda, Adv.		
Respondent by:	Shri Yogesh Nayyar, Sr.DR		
Date of hearing:	21	04	2022
Date of pronouncement:	09	05	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XXXVI, New Delhi ('CIT(A)' in short) dated 02.06.2017 arising from the assessment order dated 31.03.2011 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of Rs.4,68,035/- under Section 271(1)(c) of the Act on additions of Rs.10,64,394/- towards advertisement expenses and disallowance of depreciation of Rs.3,40,501/- on Motorcycle purchased by the assessee.

3. We have heard the rival submissions on the issue. The

penalty has been imposed on two counts.

4. In respect of penalty on addition in respect of disallowance towards advertisement expenses, it is the case of the assessee that the assessee has incurred total expenditure of Rs.13,80,262/- on printing of diaries and calendars. Out of total expenditure of Rs.1380262/-, the Assessing Officer applying the ratio of 10:2 and disallowed Rs.10,64,394/- for the reason that the papers were purchased in February/March and hence entire expenditure cannot be allowed. It is further the case of the assessee that the proportionate disallowance with reference to number of months of utilization itself is improper and the revenue expenditure could not have been apportioned and deferred having regard to the judgment in the case of the *Taparia Tools Ltd. vs JCIT (2015) 372 ITR 605 (SC)*. It is emphatically submitted on behalf of the assessee that in view of the proportionate allowance of expenditure for 2 months out of 12 months period, the genuineness of the claim towards advertisement expenses is not in doubt *per se*. It is thus the case of the assessee that when all the facts are available on record of the Revenue, no allegation towards 'furnishing of inaccurate particulars of income' for the purposes of Section 271(1)(c) is tenable in the light of the decision of the Hon'ble Supreme Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd. as reported in (2010) 322 ITR 158 (SC)*.

4.1 In counter, it is the case of the Revenue that the claim of advertisement expenses smacks of bogus expenses as explained by the Assessing Officer in the quantum proceedings.

4.2 We find justification in the plea of the assessee for inapplicability of Section 271(1)(c) in the facts of the case.

Having distributed the entire expenses in proportion of 2 months out of 12 months on equitable basis, the explanation of the assessee towards genuineness of incurring expenses gets rather vindicated. What remains now is whether mere disallowance on account of unutilized expenses would invite penalty under Section 271(1)(c) or not.

4.3 Needless to say, the Assessing Officer under Section 271(1)(c) is vested with the statutory discretion in the matter of imposition of penalty. The concept of discretion imports a duty to be fair, candid and not arbitrary. It is trite that every addition or disallowance would not invite penalty merely because it is lawful to do so. The proportionate allowance of advertisement expenses of revenue nature qua the period of use, in itself, is quite debatable. Under the circumstances, there does not appear to be any justifiable reason to impose penalty, alleging default by way of furnishing of inaccurate particulars of income.

4.4 We thus set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete penalty on this count.

5. The other issue relates to imposition of penalty on disallowance of claim of depreciation on Motorcycle on the ground that the Motorcycle is registered in the name of the Director. It is the case of the assessee that although the vehicle was registered in the name of the Director, the payment towards purchase was incurred by the assessee company, and therefore, beneficial ownership continues to remain with the company. It was further pointed out that perquisite to the extent of Rs.21,600/- under the provisions of Section 17(2) of the Act has also been added to the remuneration of the Director on account of element of personal

use. In this backdrop, we find wholesome merit in the plea of the assessee that mere disallowance of depreciation in question would not lead to imposition of onerous penalty under Section 271(1)(c) of the Act, more particularly where the quantum disallowance of depreciation itself is highly debatable in view of the undisputed facts of beneficial ownership by the assessee-company. The order of the CIT(A) confirming penalty on this score is accordingly set aside and the penalty imposed by the Assessing Officer on this score stands cancelled.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 09/05/2022.

Sd/-
[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: 09/05/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER