

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.1310/Del/2019
Assessment Year: 2012-13

Superior Drinks Pvt. Ltd. 3, Superior House, Todarmal Lane, Bengali Market, New Delhi- 110001	Vs.	DCIT Circle-24(2) New Delhi
PAN :AAACS1201Q		
(Appellant)		(Respondent)

Appellant by	Sh. Laxmi Narayan, Adv
Respondent by	Sh. B. S. Anant, Sr. DR

Date of hearing	12.05.2022
Date of pronouncement	20.05.2022

ORDER

PER YOGESH KUMAR U.S., JUDICIAL MEMBER:

The present appeal is preferred by the assessee for the assessment year 2012-13 against order dated 15/11/2018 passed by the Commissioner of Income-Tax(Appeals), 8, New Delhi.

2. Brief facts of the case are that, assessment proceedings has been initiated against the assessee and assessment order came to be passed on 31/12/2014 wherein an amount of Rs. 7,00,472/- u/s 14

A read wit Rule 8D of the I.T Rules and another addition of Rs. 26,08,661/- since there was difference between 26AS and books of account. As against the assessment order dated 31/12/2014, the assessee has challenged the same before CIT(A) wherein the CIT(A) has deleted disallowance made u/s 14A of the act. A separate penalty proceedings has been initiated against the assessee, the assessee has submitted following explanation in the assessment proceedings.

“it may be noted here that Assessee Company had not concealed any fact/suppressed any income and voluntarily taken difference of interest income for Rs,26,08,661/ as FDR Interest income in the next financial year i.e. FY2012-13 and offered the same for taxation and paid the taxes accordingly.

Assessee had furnished full details of interest income on FDRs to assessing officer and had also given cogent explanations to assessing officer.

In Star International (P) Ltd, V. Assistant CIT (2009) 308 ITR 33 (Luck Trib) (2009) 116 ITD 408 (Luck Trib); (2009) 122 TTJ (Luck Trib) 380; (2008) 23 SOT 88 (Luck Trib) it was held that even though assessing officer had carried out inquiries, there was nothing on record to show that claim of expenditure by way of commission was bogus. Assessee had offered an explanation of claim and assessing officer had not found such explanation false Therefore, Explanation 1(A) to Section 271(l)(c) not attracted.

To attract Explanation 1(B) of said section three conditions required to be satisfied simultaneously.

(I) The Assessee offers explanation which he is not able to substantiate.

(H) He fails to prove that such explanation was bona fide and

(Hi) All facts relating to the same and material to the computation of total income have been disclosed by him.

In the absence of finding by the assessing officer as to cumulative and simultaneous satisfaction of these three condition penalty under section 271(l)(c) read with Explanation 1(B) cannot be levied.

Delhi (TAT Bench in case of Poysha Goyal vs. ACIT [2015-ITRV-ITAT-DEL-012] has held that no penalty u/s 271(T)(c) could be imposed when all necessary facts were disclosed by the assessee as such it could not be said that the assessed has either concealed any income or furnished inaccurate particulars.

Hon'ble Supreme Court in CIT vs Pricewaterhouse Coopers Pvt. ltd. [2012 -ITRVSC- 244] has held that there would be no s, 271(1)© penalty for a bonafide/inadvertent/human error.

.....”

The above explanation given by the assessee found not satisfactory and passed the Deputy Commissioner of Income Tax has passed order of penalty by imposing penalty at 100% which is 8,46,380/-.

3. Aggrieved by the order of the penalty dated 27/03/2017, the assessee has filed an appeal before the CIT(A). The Ld.CIT(A) vide order dated 15/11/2018 dismissed the appeal by confirming the action of the A.O in levying the penalty.

4. Aggrieved by the order dated 15/11/2018 passed by CIT(A), the assessee has preferred the present appeal on following grounds:-

“1. That on the facts and in the circumstances of the case, Ld. CIT (A) erred in not quashing the penalty levied by the Ld. AO, the same being grossly erroneous, unjustified and bad in law.

2. That on the facts and in the circumstances of the case, Ld. CIT (A) is failed to appreciate that the penalty under section 271(l)(c) cannot be levied where the appellant has neither concealed particulars of income nor furnished inaccurate particulars of such income.

3. That on the facts and in circumstances of the case, the Ld. CIT (A) erred in holding that bona fides of the appellant have not been established, even though accepting that:

a. mere addition to income, ipso facto, cannot lead to imposition of penalty,

b. not challenging the addition during assessments does not tantamount to acceptance of wrong doing.

4. That the penalty has not initiated vide notice under section 271(l)(c) of the Act without any specific charge, hence, the said notice and the order passed under section 271(1) (c) of the Act are illegal. Bad in law and without jurisdiction.

5. *That on the facts and in the circumstances of the case and in law, the Ld CIT-A erred in not deleting the penalty amounting to Rs.8,46,380/- u/s 271(l)(c) where assessee made complete factual disclosure in accounts and returns etc and same is sufficient to knock off the extant penalty and Ld CIT-A has incorrectly decided the said issue on basis of extraneous reasoning.*

6. *That off the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not deleting the penalty amounting to Rs. 8,46,380/- u/s 271(l)(c) where assessee successfully discharged its onus of probable explanation by proving bonafide conduct.*

5. The Ld. Counsel for the assessee Sh. Laxmi Narayan, vehemently submitted that the assessee has not made any concealment to initiate penalty proceedings u/s 271(1)(c) of the Act, further submitted that the addition made by the Ld. A.O on interest of FDR amounting to Rs. 26,08,661/- has been agreeing by the assessee, without defending the same. Further submitted that the assessee has already paid tax on the said income in Assessment Year 2013-14. At no point of time, the assessee has made any concealment of income or furnishing inaccurate particulars of income. On the other hand, the assessee had disclosed complete facts of the income. The Ld. Counsel for the assessee to substantiate the said contention, the assessee had also produced computation of taxable income for Assessment Year 2013-14 and also produced copy of the statutory auditor certificate interest income of

Assessment Year 2012-13 which is extracted below:-

AUDITOR'S CERTIFICATE

“This is to certify and confirm that M/s Superior Drinks Pvt. Ltd. having its Registered Office at 3, Todarmal Lane, Bengali Market, New Delhi - 110001 with PAN AAACS1201Q has shown/declared Rs, 3,34,77,713,71/- as interest received on FDRs under Note no-2.14 (Other Income) in its Audited Profit & Loss Statement for the year ended 31st March, 2013 (i.e. AY 2013-2014) which is inclusive of Rs.26,08,670/- (Rupees Twenty Six Lacs Eight Thousand Six Hundred and Seventy only) as Interest received on FDRs for the preceding previous year i.e. F.Y. 2011-2012 relating to AY 2012-2013.”

6. The above facts makes it clear that the assessee has paid the tax on the addition sustained by CIT(A) in the subsequent year. Therefore, in our considered opinion, the case of the assessee is not a fit case to impose penalty u/ 271(1)(c) of the Act. Therefore, we inclined to delete the penalty imposed by A.O which has been confirmed by the CIT(A). Accordingly, we set aside the penalty order passed by A.O and also the order of CIT(A) by allowing the grounds of appeal.

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

Order pronounced in the open court on 20th May, 2022.

Sd/

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 20th May, 2022.

* R.N*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi