

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, AHMEDABAD  
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]  
BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1281/Ahd/2017  
(Assessment Year: 2007-08)

M/s. Pur Opale Creations Ltd. C/o Mahendra Chaudhary 10, Panchvati Society, Opp. Indra Complex, Manjalpur, Vadodara	Vs.	DCIT Circle-3(1), Vadodara
[PAN No. AAACN6797L]		
(Appellant)	..	(Respondent)

<b>Assessee by</b> :	Shri S. N. Soparkar, Sr. Advocate
<b>Revenue by</b> :	Shri R. R. Makwana, Sr. DR

<b>Date of Hearing</b>	21.03.2022
<b>Date of Pronouncement</b>	31.05.2022

**ORDER**

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 06.02.2017 passed by the Commissioner of Income Tax (Appeals)-2, Vadodara arising out of the penalty order dated 25.03.2014 passed by the DCIT, Circle-3(1), Baroda under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2007-08.

2. The assessment was finalized upon making addition on the following counts:

Loss on sale of Plant & Machinery	2,39,54,905/-
Pre-Operative Expenses	13,95,000/-
Interest Receivable	2,92,629/-

Proceeding under Section 271(1)(c) of the Act was also initiated by the Ld. AO for furnishing of inaccurate particulars of income in respect of the addition made therein culminating into the order imposing penalty on 25.03.2014 to the tune of Rs. 87,15,896/- under Section 271(1)(c) of the Act for furnishing of inaccurate particulars of income leading to concealment of income to the tune of Rs. 2,56,42,534/-.

3. In appeal penalty on account of addition pertaining pre-operative expenses of Rs. 13,95,000/- and interest receivable of Rs. 2,92,629/- was deleted. However, penalty in respect of disallowance of loss on sale of Plant and Machinery was confirmed. Hence, the instant appeal before us.

4. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

5. The appellant claimed loss on sale of Plant and Machinery at Rs. 2,39,54,905/- in the Profit & Loss Account although block of Plant and Machinery was existing. Quoting the statement given by the company's Director Shri Mahendra Chaudhary that the machines have been sold at their WDV price the Ld. AO formed an opinion that in that event there should not be any loss as per Section 50A of the Act and the block of assets do not cease to exist on the balance sheet date. In that view of the matter, the loss on sale of Plant and Machinery cannot be claimed in the Profit & Loss Account as of the view of the Ld. AO. The expenses debited in the Profit & Loss Account was, therefore, disallowed and added back to the total income of the assessee. Consequently, penalty proceeding under

Section 271(1)(c) for furnishing of inaccurate particulars of income was initiated and finalized upon levying penalty.

6. During the course of appellate proceeding by and under a written submission dated 10.11.2016 alongwith the working of loss on sale of machinery of Rs. 2,39,54,905/- the assessee brought to the notice of the Ld. AO that the Ld. AO wrongly narrated the fact that the machinery was sold at W.D.V. Price. As such the machinery was sold far below the W.D.V. and resulted in loss of Rs. 2,39,54,905/-. The ledger of scrap sale alongwith ledger account of loss on sale of Plant and Machinery and fixed assets, the audited financial statement by Chartered Accountant claiming it as expenses by the auditors were duly submitted before the Ld. CIT(A). Upon going through the entire details submitted by the assessee it appears that the assessee, no doubt with best of its efforts sought to justify that no deliberate mistake was committed by the assessee; neither any inaccurate particulars of income was furnished before the authorities below during the original assessment proceeding.

Considering the details, the CIT(A) took note of the fact that the appellant sold Plant and Machinery worth Rs. 2,52,42,005/- for a sum of Rs. 12,87,100/- to Nanumal Glasswork, Agra. The Ld. CIT(A) came to a conclusion that the assessee failed to prove the genuineness of the sale of huge Plant and Machinery for such meager sum since no confirmation was furnished by the said Nanumal Glasswork, Agra as reported by the Ld. AO on 26.12.2016 and therefore, the assessee furnished inaccurate particulars of income within the meaning of Section 271(1)(c) of the Act. Finally the penalty imposed by the Ld. AO in respect of the said disallowance loss on

sale of Plant and Machinery was confirmed by the First Appellate Authority.

7. We find that the total set off loss available to the appellant as appeared from the record available before us is Rs. 3,59,25,462/- for A.Y. 2006-07 and Rs. 2,79,45,927/- for the year under consideration. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee was directed to submit as to whether the loss claimed in the Return of Income for A.Y. 2007-08 to the tune of Rs. 2,79,45,927/- was set off against in any year whereupon the appellant submitted the Return of Income with the statement of total income for A.Y. 2009-10 to 2016-17. Relevant to mention that the Return of Income with statement of total income for A.Y. 2008-09 has already been placed before us which is reflecting at Pages 69 to 71 of the Paper Book. We have gone through the entire set of documents and we find the said loss of impugned A.Y. 2007-08 and also A.Y. 2006-07 was not claimed in any of the year neither that was carried forward from A.Y. 2011-12.

8. After careful consideration of the entire aspect of the matter we find that it may be incorrect claim made by the assessee but there is no element of concealment of particulars of income or furnishing of inaccurate particulars of income when the assessee has disclosed all the material facts, particulars relating to loss incurred on sale of assets. Merely because the assessee was on a wrong belief that it was a business loss and the Ld. AO disallowed the same, it cannot constitute sufficient reason to impose penalty under Section 271(1)(c) of the Act.

- 5 -

No doubt it is a bona-fide mistake on the part of the assessee showing this loss in the sale of assets as business loss but there was no deliberate attempt on the part of the assessee to furnish inaccurate particulars of income which could at all lead to imposition of penalty under Section 271(1)(c) of the Act. It is an undisputed fact that the assessee has disclosed particulars of loss in sale of assets before the authorities below. Instead of treating a loss as capital loss the assessee has treated the same as business loss and therefore, it cannot be said to have not disclosed all the material to the computation of income. We do not find a minimum element of concealment of income by the assessee in the case in hand and thus the penalty proceeding initiated against the assessee is found to be without any valid basis. With the above observation we conclude that the penalty proceeding initiated by the Revenue is found to be devoid of any merit and therefore, quashed. Hence, assessee's appeal is, thus, allowed.

9. In the result, the appeal preferred by the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>31/05/2022</b>
---	-------------------

Sd/-  
(PRAMOD M. JAGTAP)  
**VICE PRESIDENT**

Ahmedabad; Dated 31/05/2022

TANMAY, Sr. PS

**TRUE COPY**

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad