

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.712/Del/2020
[Assessment Year : 2011-12]**

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| ACIT, Circle-21(2), New Delhi. | vs | Rockwell Automation India Pvt. Ltd., 131, Functional Industrial Area, Patparganj, East Delhi, New Delhi-11091. PAN-AACCR3791A |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri Ravi Sharma, Adv. and Ms. Shruti, & Ms. Saloni, AR | |
| Respondent by | Shri Toufel Tahir, Sr.DR | |
| Date of Hearing | 21.07.2022 | |
| Date of Pronouncement | 27.07.2022 | |

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-7, New Delhi dated 13.11.2019. The Revenue has raised following grounds of appeal:-

1. *“Whether in facts and circumstances of the case, the CIT(A) is correct in deleting the penalty imposed by the AO despite the fact that the assessee had claimed provision for interest expense in the profit and loss account which was not a bonafide claim?”*
2. *Whether in facts and circumstances of the case, the CIT(A) is correct in observing that the assessee has not made any false claim in the return even though provision for any expense is not an allowable expense and tantamount to illegal claim?*
3. *Whether in facts and circumstances of the case, the CIT(A) is correct in accepting the assessee's contention that the due disclosure in the*

accounts were made despite the fact that provision for any expense claimed is not an allowable expense?

4. *Whether in facts and circumstances of the case, the CIT(A) is correct in deleting the penalty imposed by the AO despite the fact that the assessee's disclosure is not in conformity with the provisions as laid down in clause (B) to explanation 1 to section 271(1)(c) ?*

5. *Whether in facts and circumstances of the case, the CIT(A) is correct in observing that the assessee has furnished bonafide explanation in disclosing all material facts despite the fact that it is a settled principle that provision for any expense is not a bonafide claim?*

6. *Whether in facts and circumstances of the case, the CIT(A) is correct in observing that the additions/allowances were made due to technical/deeming provision despite the fact that the assessee has made incorrect claim in the profit and loss account under the head provision for expenses?*

7. *Any other ground that may be urged at the time of hearing."*

FACTS OF THE CASE

2. Facts giving rise to the present appeal are that the assessment was framed u/s 92CA(4)/143(3) of the Income Tax Act, 1961 ("the Act") wherein the addition of Rs.1,70,00,00/- was made on account of provision for interest on excise duty thereby, the AO assessed the total income at Rs.50,22,92,319/-. The AO also initiated the penalty proceedings u/s 271(1)(c) of the Act. Thereafter, vide order dated 18.03.2019, the AO imposed penalty of Rs.56,47,400/- u/s 271(1)(c) of the Act.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, deleted the penalty.

4. Aggrieved against the order of Ld.CIT(A), the Revenue is in appeal before this Tribunal.

5. Ld. Sr. DR vehemently argued that Ld.CIT(A) was not justified in deleting the penalty. He submitted that the case laws as relied upon by the Ld.CIT(A), were distinguishable on the facts of the present case.

6. On the contrary, Ld. Counsel for the assessee opposed these submissions and supported the order of Ld.CIT(A). He further submitted that the issue is squarely covered in favour of the assessee by the judgement of the Hon'ble Delhi High Court as relied by Ld.CIT(A) in the case of *Devsons Pvt. Ltd. Vs CIT 329 ITR 483 [Del.]*.

7. We have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a finding on fact by observing as under:-

4. *"I have carefully considered the penalty order and written submissions filed by the AR. The AO has levied the penalty with reference to addition of Rs.1,170,00,000/- made on account of provision of interest on excise duty.*

4.1. *This disallowance is in the nature of routine disallowance, particulars of which were disclosed in the return of income. It is not the case of the AO that any false claim is made in the return. Mere disallowance of a claim/expenditure does not automatically qualify to be treated as furnishing of inaccurate particulars of income. In other words, mere fact that certain amounts claimed by the appellant have been disallowed and treated as income does not necessarily lead to the conclusion that the appellant is guilty or fraud or willful neglect.*

4.2 *Given these facts, that there was due disclosure in the accounts, it is to be seen whether the appellant can be charged for concealment*

of income or for furnishing inaccurate particulars thereof. It is a settled legal position that penalty proceedings and quantum proceedings are separate and distinct. It is equally a settled legal position that the explanation offered in the penalty proceedings has to be considered separately and independently in the matrix of requirements of the penal provisions. As per opinion expressed by the Hon'ble Supreme Court in CIT vs. Anwar Ali, 76 ITR 696 findings in assessment order may constitute good evidence but it does not follow that penalty for concealment u/s 271(1)(c) is mandatory whenever an addition or disallowance is made.

4.3 *It will be relevant here to examine the provisions of Section 271(1)(c) which is reproduced below:*

"271. Failure to furnish returns, comply with notices, concealment of income, etc. - (1) If the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person -

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

Explanation 1 - Where in respect of any facts material to the computation of the total income of any person under this Act, - (A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) to be false, or (B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-

section, be deemed to represent the income in respect of which particulars have been concealed. ”

4.4 *As per Clause (A) to Explanation 1 to Section 271(1)(c), penalty is to be imposed, if an assessee fails to offer an explanation which is found by the AO to be false. Clause (B) to Explanation 1 provides that where the assessee offered an explanation but the same remained unsubstantiated, penalty should not be imposed if the explanation is bona fide and all facts relating to the same and material to the computation of the total income have been disclosed. In the present case, the appellant had offered an explanation and all facts relating to the same and material to the computation of the total income have been disclosed in the return of income. The issue therefore, which arises for the consideration is whether the appellant conduct was bonafide. The Hon'ble Delhi High Court in the case of New Holland Tractor vs. CIT 49 taxmann.com 573 had held as under:*

“31. Primary issue which arises for consideration is whether the conduct of the assessee was bonafide. We have used very strong words like erroneous, fallacious, untenable etc. with reference to various contentions and submissions made by the assessee in the quantum appeal, but we do not think we will be contradicting ourselves when we hold that the conduct of the assessee was bonafide and the onus to show and establish bonafides has been discharged. The observations and adjectives used by us in the quantum appeal rejecting the submission of the assessee have been made after having advantage and benefit of the assessment order, appellate orders and hearing arguments of the counsel for the appellant assessee and the Revenue. Hindsight results in greater clarity and wisdom Test of bonafide has to be applied keeping in mind the position as it existed, when the return of income was filed. The Act, i.e. the Income Tax Act, is a complex legislation

involving intricate and often debatable legal positions. The legal issue involved may relate to principles of accountancy. Invariably, on questions of interpretation, the assesses do adopt a legal position which they perceived as most beneficial or suitable. This would not be construed as lack of bona fides as long as the legal position so adopted is not per se contrary to the language of the statute or an undebatable legal position not capable of a difference connotation and understanding. When two legal interpretations were plausible and there was a genuine or credible plea, penalty for concealment/furnishing of inaccurate particulars, should not and cannot be imposed. If the view taken by the assessee required consideration and was reasonably arguable, he should not be penalized for taking the position. The tax statutes are convoluted and complex and there can be manifold opinions on interpretation and understanding of a provision or the tax treatment. In such cases, even when the interpretation placed by the Revenue is accepted, penalty should not be imposed if the contention of the assessee was plausible and bona fide. Of course, full facts should be disclosed. While applying the test of bonafide, we have to also keep in mind that even best of legal minds can have difference of opinion. It is not uncommon to have dissenting opinion on the question of law, in the courts.”

4.5 *The Hon’ble Delhi High Court in the case of Devsons Pvt. Ltd. vs CIT 329 ITR 483 (Del) have observed as under:*

"It is a trite law that where divergent views exist either within the department itself or such divergent views are expressed by the different High Courts and there is no uniformity or consensus on opinion on any aspect of law, the assessee cannot be faulted for taking a particular stand. The caveat, or course, is that the assessee must have placed all his cards on the table by disclosing each and every fact to the

departmental authorities or the court concerned. If the assessee does so, then merely because the departmental authorities concerned or the High Court concerned or the High Court concerned does not concur with the legal stand adopted by the assessee, it will not be enough reason to hold that the assessee is guilty of concealment of income or of furnishing inaccurate details. Thus, the question whether the assessee has invited upon himself the penalty sought to be imposed on him by the authority concerned is really a question of fact and has to be decided keeping in mind the entire gamut of events and circumstances."

4.6 *Penalty u/s 271(1)(c) was not leviable where the appellant had disclosed all material information as held by the Hon'ble ITAT, Delhi Bench in the case of Nuchem Ltd vs DCIT [49 ITD 441 (DEL)]. The Hon'ble tribunal held as under:*

"none of the appellate authority has held that the material facts relating to the computation of income have been suppressed by the assessee. Neither they have held that explanation given by the assessee has been false, nor is there a finding that the explanation remains unsubstantiated. There is no finding that the assessee has suppressed material relating to disallowance. Therefore, it cannot be said that the assessee is guilty of suppressing material facts relating to its income. There is also no finding that full material facts have not been disclosed by the assessee. It only mentions that the authorities have not accepted the explanations of the assessee for certain reasons, it is different matter that on account of difference of opinion, which is also possible amongst various authorities, the plea of the assessee has not been accepted. Under the deeming provisions, if the explanation is bonafide and material to the computation of total income, are disclosed by the assessee, Explanation 1 will not apply."

4.7 *In my view, the appellant has furnished an explanation which it has substantiated as bonafide in so much as all the material facts were disclosed in the return and the appellant, cannot be held guilty of furnishing any inaccurate particulars of income. In the landmark case of Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 the Hon'ble Supreme Court had made the following observation:*

"A glance at the provisions of section 271(1)(c) of the Income Tax Act, suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee.

Such a claim made in the return cannot amount to furnishing inaccurate particulars.”

4.8. *In view of the legal position and the facts of the case, the appellant had given an explanation, which is bonafide. Further, there is no furnishing of inaccurate particulars of income or deliberate attempt to conceal income. The additions/disallowances were due to technical/deeming provisions. The rigors of the provisions of section 271(1)(c) are clearly not attracted in this case.*

4.9 *Further the CIT(A) in the quantum case allowed the claim of the appellant in the next year i.e. 2012-13. The appellant also relied on the Judgement of High Court of Delhi in case of PCIT vs Granite Gate Properties Pvt. Ltd. [2019] 102 taxmann.com 236 (Delhi), where the Court has held that:*

That the expenses as claimed were otherwise eligible and allowed in the next assessment year, we would accept that the appellant assessee had shown that they had acted bona fide. Thus, the appellant assessee should not have been burdened with penalty for concealment of income under section 271(1)(c) of the Act. The principle which emerges from the above is that penalty should not be levied where addition on account of claim which otherwise is allowable in next year and all details relating to these expenses were disclosed by assessee.

In view of the above the penalty is deleted.”

8. The Revenue has not brought any material to rebut the finding of Ld.CIT(A) that claim of the assessee was allowed in quantum appeal in AY 2102-13. Therefore, on such disallowance in the year under appeal, no penalty would be attracted. Moreover, the Ld.CIT(A) has given a finding that the claim of the assessee was bonafide. Under these facts, we do not see any reason to

interfere into the finding of Ld.CIT(A), the same is hereby upheld. Thus, grounds raised by the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 27th July, 2022.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI