

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 1243/Ahd/2019
Assessment Year : 2015-16

M/s. Deco Mica Limited, 306, 3 rd Floor, Iscon Mall, Star Bazar Building, Jodhpur Cross Road, Satellite, Ahmedabad-380015 PAN : AAACD 8652 J	Vs	Joint Commissioner of Income-tax (OSD), Circle 1(1)(2), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Parimalsinh B. Parmar, AR
Revenue by :		Shri Ramesh Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 06/07/2022
घोषणा की तारीख /Date of Pronouncement: 03/08/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax-1, Ahmedabad ["CIT(A)" in short] dated 18.06.2019 whereby he confirmed the penalty of Rs.1,08,853/- imposed by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 ("the Act" in short).

2. The assessee, in the present case, is a company which is engaged in the business of manufacturing and trading in laminated sheets. The return of income for the year under consideration was filed by it on 28.09.2015 declaring a total income of Rs.1,00,28,180/-. In the assessment completed under Section 143(3) of the Act vide an order dated 22.11.2017, the total income of the assessee was determined by the Assessing Officer at

Rs.1,21,41,220/- after making *inter alia* an addition of Rs.3,25,499/- on account of loss on sale of assets debited by the assessee-company in the profit and loss account. Penalty proceedings under Section 271(1)(c) of the Act were also initiated by the Assessing Officer. In response to the notice issued by the Assessing Officer during the course of the said proceedings, it was explained by the assessee that the loss on sale of assets amounting to Rs.3,35,499/- debited in the profit and loss account was not added back while computing the income from business due to an inadvertent error. This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, the books of account of the assessee being a company were checked and vetted multiple times by the qualified professionals and it was thus not a case of any inadvertent mistake as sought to be explained by the assessee. He, therefore, rejected the explanation of the assessee and proceeded to impose a penalty of Rs.1,08,853/- being 100% of the tax sought to be evaded by the assessee on the addition made on account of loss on sale of assets by treating the assessee guilty of having furnished inaccurate particulars of its income.

3. The penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act was challenged by the assessee in an appeal filed before the learned CIT(A) and the following submission was made on behalf of the assessee in support of its case that the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act was not sustainable:-

“There was an amount of Rs. 3,35,499/- in respect of loss on sale of fixed assets, which was debited to the Profit and Loss Account by the Appellant Company. The same was due to oversight of the Consultant who prepared the return of income, was not added back to the income while preparing the return of income. Since, this was a glaring mistake, the addition in respect of the same was made by the Ld. Assessing Officer and the Appellant Company did not even preferred an Appeal against the same.”

However, it may be noted that the same was a genuine mistake without any intention to avoid tax. We would like to state that said amount had already been shown in Tax Audit Report u/s 44AB at clause No. 21(a)(i), as Expenditure of Capital nature and there was no willful suppression or misrepresentation of facts by the appellant company.

The appellant Company relies on the decision of Hon'ble Apex court in case of Price Water house Coopers Pvt. Ltd Vs. Commissioner of Income Tax (348 ITR 306) where Hon'ble Apex Court has held noted that " there was no willful suppression of facts by the assessee, but that a genuine mistake or omission had been committed. The assessee filed a revised return on the same day... .. According to the Supreme Court, the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars....."

Hence, no penalty in respect of the addition of Rs.3,35,499/- in respect of addition of loss on sale of fixed assets be levied as there was no attempt to suppress any income or provide any inaccurate details of income by the appellant company.

(3) Under section 271(1)(c) the penalty can be imposed only when it is found that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. The section presupposes a conscious act on the part of the Appellant to have concealed income or furnished inaccurate particulars of such income and merely because the additions/disallowances have been made in the assessment order, would not by itself make that disallowance an act of concealment or furnishing of an inaccurate particulars.

The Courts/Tribunals have time and again held that the penalty proceedings are distinct and separate from assessment proceedings. Merely because some additions / disallowance have been made and the same has been agreed upon by the assessee or confirmed in quantum appeals, does not become a sufficient ground for levy of penalty."

4. The learned CIT(A) did not find merit in the submission made by the assessee and proceeded to confirm the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act for the following reason given in paragraph No. 3.2 of his impugned order:-

“I have carefully considered the facts of the case, penalty order and written submission filed by the appellant. The Assessing Officer has levied penalty on addition of loss of sale of assets of Rs. 3,35,499/- which was required to be added In the total income but was not added by the appellant. The appellant has submitted that due to human error the addition of loss on sale of assets could not be added in total income and there was no malafide intention to add the above loss to the total income. Appellant contended that it has filed returned income of Rs. 1,00,28,180/-, so there cannot be any intent to evade such a small sum. As regard to penalty levied on not adding sum of Rs. 3,35,499/-, there is no dispute that the above amount was required to be added in the total income but was not added by the appellant. Therefore, the appellant has clearly furnished inaccurate particulars of income to that extent. As regard to appellant's argument that there was no intent to evade the tax, it has been clarified by Honourable Supreme Court in the case of Dharmendra Textile Processors [306 ITR 277] (2008) (SC) that penalty is a civil liability to compensate the revenue. Therefore, AO is not required to prove the intent. In view of the above, AO is directed to levy the penalty u/s. 271(1)(c) of the I.T. Act, 1961 for furnishing inaccurate particulars of income in respect of loss on sale of assets of Rs.3,35,499/-. In view of the above facts of the case, the penalty levied by the AO is confirmed.”

5. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

6. The learned Counsel for the assessee reiterated before us the submission made before the authorities below that the loss on sale of assets debited in the profit and loss account had remained to be added back in the computation of income inadvertently. He invited our attention to the copy of profit and loss account placed at page no. 50 of the paper-book to point out that the amount of Rs.3,35,499/- was debited therein with a clear description “Loss on Sale of Fixed Assets”. He also invited our attention to the relevant portion of the Tax Audit Report at page no.60 of the paper-book to show that loss on sale of fixed asset of Rs.3,35,499/- was clearly stated as expenditure of capital nature. He contended that these details and documents furnished by the assessee-company along with its return of

income clearly show that the relevant particulars were fully and truly furnished by the assessee and the mistake in not adding back the loss of Rs.3,35,499/- on sale of assets in the computation of income was a *bona fide* mistake inadvertently committed by the assessee. He also invited our attention to the relevant portion of the submission made by the assessee during the course of assessment proceedings placed at page no.105 of the paper-book whereby this inadvertent mistake was accepted by the assessee and the income was offered. Relying on the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd Vs. CIT, [2012] 348 ITR 306 (SC), he contended that the case of the assessee is not a fit case to impose penalty under Section 271(1)(c) of the Act and urged that the same deserves to be cancelled.

7. The learned Departmental Representative, on the other hand, submitted that the mistake in not adding back the loss on sale of fixed assets in computation of income by the assessee was detected by the Assessing Officer and only after such detection because of scrutiny selection, the assessee was compelled to offer the corresponding income. He contended that this is not a case of any inadvertent mistake committed by the assessee and the assessee being guilty of furnishing inaccurate particulars of its income, penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act is rightly confirmed by the learned CIT(A).

8. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the amount of Rs.3,35,499/- debited in the profit and loss account on account of loss on sale of fixed assets was not allowable as deduction being expenditure of capital nature and since the same was not added back by the assessee-

company in the computation of income, the Assessing Officer added the said amount to the total income of the assessee and also imposed penalty under Section 271(1)(c) of the Act holding that it was a case of furnishing of inaccurate particulars of its income by the assessee. He rejected the explanation of the assessee that there was an inadvertent mistake in not adding back the amount in question on account of loss on sale of fixed assets in the computation of income on the ground that it was a case of a company and books of accounts were prepared and audited by professionals. The learned CIT(A) also agreed with the view of the Assessing Officer and confirmed the penalty imposed by him under Section 271(1)(c) of the Act. At the time of hearing before us, learned Counsel for the assessee has invited our attention to the profit and loss account of the assessee-company (copy placed at page No.50 of the paper-book) wherein the amount of Rs.3,35,499/- in question was debited by the assessee with the narration "*Loss on Sale of Fixed Assets*". He has also invited our attention to the relevant portion of the Audit Report placed at page No.60 of the paper-book wherein the loss in question on sale of fixed assets of Rs.3,35,499/- was clearly stated as in the nature of capital expenditure. As rightly contended by him, these details furnished by the assessee-company along with its return of income clearly show that the relevant particulars were duly and fully furnished by the assessee showing the details of loss as well as its nature and it was not a case of furnishing of inaccurate particulars of income by the assessee-company. Moreover, in the written submission dated 31st August, 2017 filed during the course of assessment proceedings, a request was made on behalf of the assessee-company to add the amount in question on account of loss on sale of fixed assets by stating as under:-

"It is respectfully submitted that while preparing the statement of total income, through oversight of the person, loss on sale of fixed assets remain to be added hence we request your good self to kindly add Rs.3,35,499/- in the total income and oblige. We are very much regret for the above mistake of the clerk."

9. Keeping in view this submission made by the assessee in writing during the course of assessment proceedings itself as well as the further details already furnished by the assessee along with its return of income giving full and true details of the loss as well as its capital nature, we find merit in the contention of the learned Counsel for the assessee that the mistake in not adding back the loss on sale of fixed assets in computation of income was a *bona fide* mistake inadvertently committed by the assessee. In the case of Price Waterhouse Coopers Pvt Ltd (supra) relied upon by the learned Counsel for the assessee, the Hon'ble Supreme Court held that even if the assessee was a reputed firm and had great expertise available with it, it was possible that it could make a "silly" mistake. In this regard, the Hon'ble Supreme Court took note of the fact that the Tax Audit Report filed by the assessee along with return of income unequivocally stated that the provision for payment was not allowable under Section 40A(7) of the Act and held that the contents of the Tax Audit Report suggested that there was no question of the assessee concealing its income or furnishing any inaccurate particulars of its income. Hon'ble Apex Court held that it was through a *bona fide* and inadvertent mistake, the assessee while submitting its return, failed to add the provision for gratuity to its total income. It was held that the imposition of penalty on the assessee, therefore, was not justifiable. In our opinion, the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd (supra) is squarely applicable in the facts of the present case as discussed above and respectfully following

the same, we cancel the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act and confirmed by the learned CIT(A).

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

Order pronounced in the open Court on 3rd August, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 03/08/2022

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आदेश की प्रतिलिपि अग्रेषित/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 प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad