INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C": NEW DELHI

BEFORE

SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 497/Del/2020
Assessment Year: 2014-15

ACIT, Circle 12(1), New Delhi	Vs.	Indian Drugs & Pharmaceuticals Limited, IDPL Complex, Dundahera, Gurgaon, Haryana Pin-122016
(Appellant)		**(Respondent)**

Department by:	Shri Anuj Garg, Sr. DR
Assessee by:	None
Date of Hearing:	05.07.2022
Date of pronouncement	25.08.2022

O R D E R

PER ASTHA CHANDRA

The appeal by the Revenue is directed against the order dated 29.11.2019 of the Ld. Commissioner of Income Tax (Appeals)-44, New Delhi **("CIT(A)")** pertaining to the assessment year **("AY")** 2014-15

2. The Revenue has taken the following ground:

"That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty levied under section 271(1)(c) of the Act amounting to Rs. 53,48,539/- ."

3. The Ld. DR has been heard. None appeared on behalf of the assessee.

4. Briefly stated, the assessee is a public sector sick industrial undertaking. For AY 2014-15, the assessee filed its return on 29.11.2014 declaring loss of Rs. 89,65,48,539/-. During the course of assessment proceedings, the assessee filed a revised computation of income reducing its total loss which was not accepted by the Ld. Assessing Officer **("AO")**. The Ld. AO completed the assessment on 30.11.2016 on total loss of Rs. 86,69,45,090/- thereby making disallowance of Rs. 2,96,03,452/-. He initiated penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 (**"Act")**. On appeal the Ld. CIT(A) confirmed the said addition/ disallowance. The Ld. AO imposed the impugned penalty of Rs. 53,48,536/- vide his order dated 28.03.2019 under section 271(1)(c) of the Act against which the assessee filed the appeal before the Ld. CIT(A) who deleted the penalty. Aggrieved, the Revenue is in appeal before the Tribunal.

5. We have perused the Ld. AO's order of penalty and the appellate order of the Ld. CIT(A) and proceeded to decide the appeal taking into account the submissions of the Ld. DR as none represented the case of the assessee before us.

6. The penalty order reveals that the impugned penalty has been imposed by the Ld. AO for the solitary reason that the assessee made claim for deduction of expenses which were not allowable. The assessee furnished explanation for claiming higher deduction of expenses in the revised computation. The assessee submitted that it filed its original return on estimate basis as the accounts were not finalized and were unaudited adding therein Rs. 70 crores on adhoc basis for various probable disallowances. After the accounts were finalized and got audited the assessee filed a revised computation of income declaring total loss of Rs.105.74 crores. It is revealed from the assessment order dated 30.11.2016

that it was completed on the basis of revised computation submitted by the assessee. Moreover, merely because the claim of the expenses made by the assessee is not allowable as deduction, it cannot form the basis of levy of concealment penalty. It is now well settled that a mere making of the claim which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee.

7. The Ld. CIT(A) deleted the impugned penalty observing in para 5 as under :-

"5.1 In the aforesaid appeal is against the penalty order u/s 271 (1)(c) of the Act. The basic facts of the case indicate that the Indian Drugs & Pharmaceuticals Ltd. Co. is a wholly owned Public Sector undertaking of Govt. of India and in the Business of manufacturing of life saving medicines. The company is a sick Industrial undertaking and was under BIFR. The company incurred heavy losses, the BIFR had declared IDPL as sick units and they had also passed an order for winding up of the company in Dec. 2003 and almost entire staff was given compulsory VRS in 2013. Due to shortage of the staff and heavy losses, the accounts of the company could not be prepared and finalized in time. As the accounts were not finalized and got audited, the return for the year was filed on estimated basis based on unaudited accounts on a total loss of Rs. 89,65,48,539/-. While filing the ITR based on unaudited accounts, a sum of Rs. 70 Cr. was added in the taxable income on ad-hoc basis by own considering the various probable disallowances which may come after the accounts were finalized and audited. The accounts of the company was finalized and got audited on 01.09.2015 after the due date of filing the return. During the assessment proceeding, a revised computation of income was filed based on audited accounts declaring total loss of Rs. 105.74 Cr. The returned loss on the basis of revised computation of me was increased by Rs. 16.09 Cr.

5.2 It was further seeing that during the course of assessment proceedings, the appellant furnished a revised computation of income which was based on audited accounts which varied the loss already filed by the appellant. The assessment was completed on the basis of the revised computation submitted by the appellant only. The Assessing Officer went on to impose penalty on the additions made due to the revised computation filed.

5.3 The primary argument of the appellant is that no information was concealed at any point of time. It is only due to the facts that the company was in liquidation, audited accounts could not be finalized before filing of the return. As a result, income was filed on an estimated basis by the appellant. Subsequently, the accounts were audited and a revised computation was filed.

5.4 The Assessing Officer in his penalty order has stated in para 6 as under:-

"6. Further, at the time of filing of return of income, the assessee was required to furnish correct particulars of its income. Income Tax Act requires the assessee to furnish true & correct figure of its income as per law in force. Deduction which is not allowable in the eyes of law and still claimed as expenditure is clearly a form of tax evasion and falls under the term ''furnishing of wrong particulars of income". The assessee took a chance with the department and did not declare true and correct income particulars which reduced its tax liability. Had the case not been selected for scrutiny, the fact would not have come in picture and the assessee would have easily enjoyed less tax liability. The explanation offered in this regard is also not convincing. The amount was apparently not allowable as deduction, still the assessee made a claim for that. Hence, from the facts of the case, the explanation offered by the assessee is not accepted and rejected."

5.5 It is however seen that the argument advanced by the Assessing Officer is not correct. The main issue required to re-examine in explanation one is that whether there was a bona-fide reason for filing the particulars which were so filed in the original return. In the appellant's case, it is clear that the company is a sick undertaking under BIFR. Almost the entire staff of the company was given VRS in 2013. This led to the situation of the accounts not been completed. These facts have not been disputed. As a result the appellant has a bona-fide explanation for furnishing the said particulars. On the merits of the case, the main contention of the assessee is that no penalty can be levied in its case because the assessee has neither concealed any particulars of income nor furnished any inaccurate particulars of such income. A plain reading of the above provision of sec. 271(l)(c) as applicable for the Assessment Years under consideration makes it clear that the scheme of sec. 271 (l)(c) visualizes imposition of penalty when the assessee has concealed income or when the assessee has furnished inaccurate particulars of income. In addition to these two situations, penalty can also be imposed, inter alia, when assessee is deemed to have concealed particulars of income under Explanation l to sec. 271 (1)(c). A deeming fiction under Explanation 1 to sec. 271(l)(c) envisages two situations - (a) first, where in respect of any facts material to the computation of total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the AO or the CIT(A); and, (b) second, where in respect of any facts material to the computation of total income under the provisions of this Act, the assessee is not able to substantiate the explanation and the assessee 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 the assessee. In the first situation, the deeming fiction is triggered by the inaction of the assessee by his not giving the explanation with respect to any fact material to the computation of total income, or by action of the AO or the CIT(A) by giving categorical finding to the effect that the explanation given by the assessee is false. In the second situation, the deeming fiction is triggered by the failure of the assessee leading to satisfaction of conditions laid down in cl. (B) of Explanation 1 namely that the assessee is not able to substantiate an explanation in respect of any fact material to the computation of total income, and the assessee is also not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of total income have been disclosed by the assessee. When this deeming fiction comes into play, which can only happen in one of the above situations, the related addition or disallowance in computing the total income of the assessee, for the purposes of s. 271(l)(c), is deemed to represent the income in respect of which inaccurate particulars have been furnished. Thus,

the penalty under sec. 271(l)(c) is a penalty for concealment of income or for furnishing of inaccurate particulars, or, under the extended definition by the virtue of Explanation. 1 to sec. 271(l)(c), for a deemed concealment of income.

5.6 The judicial precedent also in this regard states that claim by the assessee which is not admissible would not make him liable to penalty u/s 271 (l)(c). The principle case of the Supreme Court in Reliance Petroproducts is quoted here under:

S. 271 (1) (c) penalty cannot be imposed even for making unsustainable claims. The assessee claimed deduction u/s 26 (1) (iii) for interest paid on loan taken for purchase of shares. The AO disallowed the interest u/s 14A and levied penalty u/s 271 (1) (c) on the ground that the claim was n sustainable. The penalty was deleted by the appellate authorities. On appeal by the department to he Supreme Court, HELD dismissing the appeal:

(i) S. 271 (1) (c) applies where the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income". The present was not a case of concealment of the income. As regards the furnishing of inaccurate particulars, no information given in the Return was found to be incorrect or inaccurate. The words "inaccurate particulars" mean that the details applied in the Return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271(l)(c).

(ii) The argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every Return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty u/s 27I(l)(c). That is clearly not the intendment of the Legislature.

(iii) The law laid down in Dilip Shroff 291 ITR 519 (SC) as to the meanings of the words "conceal" and "inaccurate" continues to be good law because what was overruled in Dharmendra Textile Processors 306 ITR 277 (SC) was only that part in Dilip Shroff where it was held that mens rea was an essential requirement for penalty u/s 271(l)(c). "

5.7 The judgment of Reliance Petroproducts clearly shows the rejection of claim would not result in penalty consequences to the appellant. The penalty is therefore not sustainable and is deleted."

8. We concur with the findings and observations of the Ld. CIT(A). There is no substance in the appeal of the Revenue.

9. Accordingly, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25th August, 2022.

sd/-	**sd/-**
(N.K. BILLAIYA)	**(ASTHA CHANDRA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 25/08/2022

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3. CIT
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ASSISTANT REGISTRAR
ITAT, New Delhi

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