

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.1684/Del/2020
(ASSESSMENT YEAR 2016-17)**

Central News Agency Pvt. Ltd. P-20, Connaught Place, Connaught Circus, New Delhi-110 001 PAN-AAACC 4233C (Appellant)	Vs.	DCIT, Circle-5(2) New Delhi (Respondent)
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Appellant by	Sh. Ranjan Chopra, Authorized Representative
Respondent by	Sh. R. S. Yadav, Senior Departmental Representative ("Sr. DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-2, New Delhi ["Ld. CIT(A)", for short], dated 30/07/2020 for Assessment Year 2016-17.

Grounds taken in this appeal are as under:

"1. That The order of learned CIT(A) sustaining the order of the learned Assessing Officer is bad in law and on facts and is liable to be set-aside.

2. *That the learned CIT(A) has erred in law and on facts in upholding the penalty of Rs.51,993/- levied u/s 271(1)(c) without appreciating the facts of the appellant in proper perspective.*

3. *That orders passed by learned CIT(A) and learned Assessing Officer are against the principles of natural justice.*

4. *That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”*

(B) Vide assessment order dated 19/12/2018 passed u/s 143(3) of Income Tax Act. The assessee's total income/loss was determined at (48,71,176)/-; as against the returned loss of Rs.50,39,439/-. In the aforesaid assessment order, an addition of Rs.1,68,263/- was made on account of personal expenses of the Directors. The relevant portion of the assessment order is reproduced as under:

“3. Addition on account of personal expenses:

It was observed that assessee-company had disallowed a part of its expenses as personal expenses of the directors in its computation of income. However, this disallowance was less than the amount which the auditor had specified in his report in Form 3CD. Vide show cause dated 14.12.2018, the assessee was asked as to why should these expenses which were not in the nature of business expenses be disallowed and treated as its income for AY 2016-17. In its reply dated 17.12.2018, the assessee accepted that it had not added back the motor car expenses to its income while computing taxable income and offered the same for taxation.

Hence, the expenses of Rs. 1,68,263/- on account of personal nature are hereby disallowed and added back to the income of assessee.

(Addition Rs. 1,68,263/-)

3.1 For the above reason, I am satisfied that the assessee company has attracted the provisions of section 271(l)(c) of the Act by furnishing inaccurate particulars of its income, for which penalty proceedings u/s 271(l)(c) of the Act are being initiated separately.

4. With the above remarks, the total income/loss of the assessee company is recomputed as under: -

Gross total loss as per Return of Income	Rs. (50,39,439)/-
Add: Disallowance of expenses	Rs. 1,68,263/-
Total Income/loss	<u>Rs. (48,71,176)-</u>

5. Assessed at a loss of Rs. (48,71,176)/-. Credit for TDS, advance tax and regular taxes paid after verification is being given. Interest u/s 234A, B, C & D of the Act is being charged, as applicable. Demand notice u/s 156 of the Act along with challan is being issued. Penalty notices u/s 274 r.w.s. 271(1)(c) of the Act are being issued separately.”

(B.1) The assessee accepted the aforesaid addition of Rs.1,68,263/- and did not appeal against the assessment order. This is understandable, because the assessee had itself appeal the amount for addition during assessment proceedings before the Assessing Officer. Subsequently, order u/s 271(1)(c) of Income Tax Act was passed by the Assessing Officer on 27/06/2019 levying penalty amounting to Rs.51,993/- in respect of the aforesaid addition of Rs.1,68,463/-. Aggrieved, the assessee filed appeal in

the office of Ld. CIT(A) against order levying penalty. The aforesaid penalty at Rs.51,993/- was confirmed by the Ld. CIT(A) vide impugned appellate order dated 30/07/2020. Aggrieved again, the assessee filed appeal against the order of Ld. CIT(A).

(B.2) In the course of appellate proceedings in ITAT; the paper book was filed from the assessee's side, containing the following particulars:

1. Summary of the case
2. Original Computation of income for the AY 2016-17
3. Relevant Page of Schedule BP of ITR form
4. Relevant page of Copy of Tax Audit Report
5. Depreciation Schedule as per IT Act
6. Copy of Revised computation filed before learned AO

(B.3) The following compilation of judgments were also filed from the assessee's side:

-Price Waterhouse Coopers (P.) Ltd. v. CIT [2012] 25 taxmann.com 400/211 Taxman 40/348 ITR 306 (SC)

-DCIT, Mumbai Vs Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai-Trib.)

CIT v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158 (SC)

-Tristar Intech (P.) Ltd vs. ACIT [2017] 88 taxmann.com 392 (Delhi-Trib.)

-Vimalachal Print & Pack (P.) Ltd. vs. DCIT [2022] 137 taxmann.com
415 (Ahmedabad-ITAT)

(C) At the time of hearing before us, the Ld. Authorized Representative (“AR” for short) for the assessee drew our attention to the summary of the case filed as a part of the aforesaid paper book. The relevant portion of the summary of the case is reproduced as under:

“FACTS:

Under instructions from the appellant, we would like to submit the following:

-The appellant had filed its return for the year under reference, declaring loss of Rs.50,39,439/- on 17.10.2016.

- The learned AO had made addition of Rs.1,68,263/- to the total income while passing order u/s 143(3) of the Income Tax Act, 1961 on account of disallowance being personal in nature.

- On passing of the above order, the learned AO has assessed loss at Rs.48,71,176/-, the above said disallowance was only due to bonafide/inadvertent mistake by the appellant while making computation of income.

*-Thereafter, proceedings under section 271(1)(c) were initiated by the Id. AO and appellant had duly replied to the show cause notice issued by the AO. However, the **AO did not accept the submission filed by the appellant and had levied penalty of Rs.51,993/- on the above by passing order u/s 271(1)(c) of the Act.***

-Against the order passed by AO, appellant had filed appeal before learned CIT(A). The learned CIT(A) dismissed the appeal stating that the

explanation of the appellant cannot be held to be bonafide in the context of the facts of the case.

-Aggrieved by the order of learned CIT(A), the appellant had filed appeal before your lordships.

BACKGROUND

In the present case under consideration, **the appellant had suo-moto disallowed a part of its expenses as personal expenses of the directors in its computation of income (Refer Annexure-A)**, the details of which are given as under:

- In Schedule BP of Income Tax Return **(Refer Annexure -B). assessee had suo-moto disallowed expenditure of personal nature of Rs. 1.33.291/- under SI. No. 7 (b)** which is also duly reflected in Tax Audit Report under Clause 21 (a) i.e. 1 /3rd of Directors Telephone Expenses : Rs.32,427/- plus 1 /6th of Total Interest on Car loan i.e Rs. 1,00,544/-, total of which comes out to Rs. 1,33,291/-
- Further, we request your lordship to refer to the depreciation schedule as per Income Tax Act, 1961 **(Refer Annexure-C)**. On going through the same, your lordship would verify that WDV + Additions on Motor Cars comes out to Rs. 1,23,06,028/-. Depreciation on the same @ 15% comes out to Rs. 18,45,904/-, however the same was taken as Rs.15,38,192/- i.e 5/6th of total depreciation on cars and remaining 1 /6th i.e. **Rs.3.07,651/- was suo-moto disallowed by the assessee though not reflected in Tax Audit Report.**
- However, an amount of Rs. 1,68,263/- which is duly reflected in Tax Audit Report as 1 /6th of Motor Expenses being personal in nature, **same was, due to over sight, inadvertently omitted to be considered in computation of income without any malafide intention.** Therefore, revised computation of income was filed before the learned AO at the time of assessment proceedings **(Refer Annexure- D)**.

Thus, your lordships would agree that amount disallowed was not hidden in the accounts:

*The expenditure claimed is clearly stated in the accounts filed before the learned AO. Moreover, the details called for by the AO were also submitted. The learned AO did not find the details or particulars wrong or incorrect. **The appellant had filed revised computation of income (Refer Anexure-D) during assessment proceedings wherein an amount of Rs.1.68,263/-, being personal in nature, inadvertently omitted to be considered in computation of income without any malafide intention was added back. Therefore, there is neither concealment nor filing of any inaccurate particulars on part of the appellant.***

Moreover, amount disallowed on account of personal expenses of directors was actually bonafide mistake of oversight, not warranting levy of penalty u/s 271(1)(c) of the Act.

“Concealment of income” and “furnishing inaccurate particulars” are different. Both concealment and furnishing of inaccurate particulars refer to deliberate acts on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestion falsi.

The appellant had disclosed the particulars of all the expenses incurred during the year in the Audited Financial Statements for the relevant year and details of such expenses as and when called for during the course of assessment proceedings were also filed. It was further

submitted that during the course of assessment proceedings, the assessee was asked to furnish the details of expenses incurred and to explain as to why expenses be not disallowed. In response thereto, the assessee had filed reply giving explanation regarding the same. Accordingly, all facts relevant to the issue of disallowance were duly disclosed by the assessee. There is no finding that assessee has concealed any of the aforesaid particulars or factually inaccurate particulars either in the return of income or during the assessment proceedings.

In such circumstances, the assessee cannot be said to have furnished inaccurate particulars of income, warranting imposition of penalty u/s 271(1)(c) of the Act.

In view of the above, your lordships would agree that it is not a case where the appellant had concealed any particulars of income in the return of income as to fulfill the conditions prescribed under Section 271 (1)(c) of the Act. In fact, a perusal of order of the assessment shows that the AO had made the disallowance only on the basis of disclosures made by the appellant. Mere disallowance of claim, does not warrant imposition of penalty u/ s 271(1)(c) of the Act.

In view of the above, in the present case, your lordships would agree that addition/ disallowance made by the AO cannot be considered for the purpose of attracting levy u/ s 271 (1)(c) of the Income Tax Act, 1996.

We therefore request your lordship to allow the appeal in favour of the appellant by deleting penalty of Rs. 51,993/- levied by the learned AO.”

The Ld. AR for the assessee further submitted that the assessee made a computational error in its return on income, but the error was bonafide/inadvertent. He also submitted that it was the human error without any intention to furnish inaccurate particulars or to conceal income. He also submitted that the assessee's returned income (loss) as well as assessed income (loss), both were loss; and therefore, there was no likelihood of the assessee gaining any immediate advantage in terms of tax liability for the year under consideration (Asst. Year 2016-17). The Ld. AR placed strong reliance on the following judgments.

-Price Waterhouse Coopers (P.) Ltd. v. CIT [2012] 25 taxmann.com 400/211 Taxman 40/348 ITR 306 (SC)

-DCIT, Mumbai Vs Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai-Trib.)

CIT v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158 (SC)

-Tristar Intech (P.) Ltd vs. ACIT [2017] 88 taxmann.com 392 (Delhi-Trib.)

-Vimalachal Print & Pack (P.) Ltd. vs. DCIT [2022] 137 taxmann.com 415 (Ahmedabad-ITAT)

The Ld. AR for the assessee further emphasized the fact that revised computation of income offering the aforesaid amount Rs.1,68,263/- for addition, was filed by the assessee during the assessment proceedings before the Assessing Officer as soon as the bonafide and inadvertent mistake came to the knowledge of the assessee. In view of these submissions, the Ld. AR for the assessee contended that the aforesaid penalty of Rs.51,993/- u/s 271(1)(c) of Income Tax Act should be cancelled. The Ld. Sr. DR relied upon the orders of the Ld. CIT(A) and Assessing Officer.

(C) We have heard both sides. At the time of hearing before us, there was no material dispute regarding facts of the case between the representatives of two sides, i.e., Ld. AR for the assessee and Ld. Sr. DR for Revenue. It is not in dispute that the assessee filed revised computation of income/loss, offering the aforesaid amount of Rs.1,68,263/- for addition, in the course of assessment proceedings before the Assessing Officer. It is also not in dispute that the assessee company had disallowed a part of the expenses as personal expenses of the Directors, in its computation of income,

except the aforesaid amount of Rs.1,68,263/-. It was not the case of the Ld. Sr. DR for Revenue, at the time of hearing before us, that the assessee's case is not squarely covered in favour of the assessee and against the Revenue by the judgments in the cases of (i) Price Waterhouse Coopers (P.) Ltd. vs. CIT [2012] 25 taxmann.com 400/211 Taxaman 40/348 ITR 306(SC) (ii) DCIT, Mumbai Vs Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai-Trib.) (iii) CIT Vs. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158 (SC) (iv) Tristar Intech (P.) Ltd. vs. ACIT [2017] 88 taxmann.com 392 (Delhi-Trib.) (v) Vimalachal Print & Pack (P.) Ltd. vs.DCIT [2022] 137 taxmann.com 415 (Ahmedabad- ITAT); on which the Ld. AR for the assessee placed reliance.

(C.1) We notice that the addition of the aforesaid amount of Rs.1,68,263/- is based on *ad hoc* estimation of personal use of car by the Directors of the company. The personal use of the car was estimated in *ad hoc* manner at the rate of 1/6 of the claim. In the computation of income filed with return of income (loss); the assessee *suo motu* disallowed 1/6th out of claim of depreciation on

car. Thus, Rs.3,07,651/- out of total depreciation claim of Rs.18,45,904/- was *suo motu* disallowed by the assessee. Further, 1/6th out of interest on car loan, and 1/3 out of telephone expenses were also *suo motu* disallowed by the assessee in computation of income filed with return of income (loss). The total amount of *suo motu* disallowance made by the assessee in computation of income filed with return of income, on account of personal use of the Directors of the assessee company is, Rs.4,40,942/- (including the aforesaid amount of Rs.3,07,651/-). However, the assessee made a computational error in not disallowing 1/6th out of expenses on car amounting to aforesaid Rs.1,63,263/- being 1/6th out of motor car expenses. We accept the assessee's claim in the facts and circumstances of the specific case before us, that this computational error was due to oversight and inadvertent mistake, and that the error was a bonafide one. We are of the view that the present case before us is squarely covered in favour of the assessee and against Revenue by order of Hon'ble Supreme Court in the case to Price Waterhouse Coopers (P.) Ltd. vs. CIT [2012] 25

taxmann.com 348 ITR 306 (SC), in which the Hon'ble Supreme Court held as under:

“19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that 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.

21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside. No costs.”

(C.2) We are also of the view, in the specific facts and circumstances of the case before us, that the inadvertent and bonafide mistake made due to oversight did not amount to furnishing inaccurate particulars of income, or concealment of income.

(C.2.1) In view of the foregoing and respectfully following the order of Hon'ble Supreme Court in the case of Price Waterhouse

Coopers (P.) Ltd. vs. CIT (supra); we are of the view in the specific facts and circumstances of the present case before us, that this is not a fit case for levy of penalty u/s 271(1)(c) of IT Act. Accordingly, we set aside the impugned appellate order dated 30/07/2020 of the Ld. CIT(A) and cancel the aforesaid penalty amounting to Rs.51,993/- levied by the Assessing Officer in aforesaid order dated 27/06/2019 passed u/s 271(1)(c) of the Income Tax Act.

(D) In the result, this appeal filed by assessee is allowed.

Order pronounced on 25/08/2022.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated:25/08/2022

Pk

Copy forwarded to:

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

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW, DELHI