

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 7640/Del/2019
Assessment Year: 2014-15**

Jain Peripherals P. Ltd.,
H.No. 297, Sector-15, Part-I,
Gurgaon.

PAN: AAACJ9590R
(Appellant)

Versus DCIT, Circle 13(1),
New Delhi.

(Respondent)

Appellant by : Sh. Anil Jain, Ld. CA
Respondent by : Sh. Ravi Kant Choudhary, Ld. Sr. DR

Date of hearing : 30.08.2022
Date of order : 09.09.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 19.07.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-5, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2014-15.

2. Brief facts, relevant for adjudication of the instant appeal, are that in the instant case, the Assessee by filling its return of income has shown the loss of Rs.32,87,521/- towards capital loss, qua sale of property i.e. shop No. LG-24, South Point Mall, Gurgaon, on consideration of Rs. One 1,00,00,000/- which was purchased on consideration of Rs.1,32,87,521/- , therefore the Assessee was asked by the AO to furnish the sale and purchase deed of the property. In response the Assessee by filling its reply submitted that it has received advance sale price of Rs.1,10,00,000/- , for the said property during assessment year 2013-14 (Ledger Account of advance against property for year ending 31st March, 2013 is enclosed) and by mistake, the Assessee has in the assessment year 2014-15, entered Rs.1,00,00,000/- as advance against the said property and had transferred the difference of Rs.10,00,000/- to the next year (Ledger Account of advance against property for the year ending 31st March, 2014 is enclosed), which has resulted in capital loss of Rs.22,87,521/- instead of Rs.32,87,521/-.

2.1 The Assessing Officer considered the submissions of the Assessee and the documents submitted by it and observed that the Assessee has purchased the property for Rs.51,08,127/- on 11.07.2013 and paid interest on loan for the property amounting to Rs.12,83,987/- during the F.Y. 2011-12. The Assessee has also shown Rs. 29,03,534/- on account of various expenses (Rs.15,93,503/- for possession of shop amount issued in favour of DLF South Point, Rs.2,31,598/- paid for maintenance of shop in favour of Jones Lang Lassalle Meghraj Building Operation (P) Ltd. and Rs.10,78,433/- for possession of DD issued in favour of DLF Facilities Ltd), but on asking to submit the proof/bills/vouchers in

respect of expenses incurred, the Assessee could not furnish any documentary evidence like bills or vouchers.

2.2 The Assessing Officer ultimately held that these expenses cannot be considered as purchase cost of the property. No other details in respect of purchase of property have been submitted by the AssesseeCompany. Accordingly total purchase cost for the property comes to Rs.63,92,114/-. The Assessing Officer ultimately by re-computing the capital gain/loss, made the addition of Rs.78,95,407/- {Rs.32,87,521/- which was claimed as short term capital loss + Rs.46,07,886/- (Rs. 110,00,000/- -Rs. 63,92,114/-) } as capital gain.

2.3 The Assessing Officer also initiated the penalty proceedings u/s. 271(1)(c) of the Act, qua the addition for filing inaccurate particulars of income. Before the Assessing Officer, during the penalty proceedings, the Assessee claimed that during the assessment stage, the Assessee had already closed down its business and therefore, complete record for the assessment year under consideration was not traceable by the Company, due to which the same could not be produced due to time barring assessment proceedings. The Assessee in bona fide manner, considering all the documentary evidence as available with it during the time of filing return of income, has filed the same after calculating the short term capital gain which has also been recorded in audited books of accounts of the Assessee company and that non-traceability of those documentary evidences at this stage after few years cannot be considered as furnishing of inaccurate particulars of the income by the Assessee.

2.4 The Assessing Officer considered the claim of the Assessee and the judgments relied upon by the Assessee but found the claim of the Assessee as not acceptable and consequently, imposed the penalty of Rs.24,41,157/- @ 100% of the tax sought to be evaded on the amount of additions of Rs.78,95,407/- qua capital gain and Rs. 4778/- qua difference between the ITR vis a vis computation of income, by holding *“that the act of the Assessee was deliberate act to furnish the inaccurate particulars of income, which lead to evade the income of Rs.79,00,185/-”* and relying upon the judgment passed by the Hon’ble jurisdictional High court in the case of CIT vs. Zoom Communications Pvt. Ltd. 327 ITR 51 wherein it was held that that *“it is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the Assessee, but it cannot be disputed that the claim made by the Assessee needs to be bona fide. If the claim besides being incorrect in law is mala fide, Explanation 1 to section 271(1)(c) would come into play and work to the disadvantage of the Assessee.”*

3. The Assessee being aggrieved, challenged the said penalty before the Id. Commissioner, who by impugned order though deleted the penalty qua addition of Rs.4778/- by holding that to impose the penalty on account of difference between the returned income (loss) and income (loss) as per computation, concealment through inaccurate particulars is not tenable, which is a rectifiable mistake, however, affirmed the penalty to the extent and on account of addition of Rs.78,95,407/- by concluding as under :

"5.1 I have gone through the assessment order, penalty order, details provided by the appellant and other materials brought on record. In this case, the penalty have been imposed on the addition made towards capital loss shown by the appellant

company amounting to Rs. 78,95,407/-, as the appellant could not furnish any documentary evidence regarding value of property and other expenses incurred. The appellant claimed short term capital loss on sale of property, amounting to Rs. 32,87,521/-. The same was recomputed by the AO due to lack of evidence and the sale of property has been recomputed arising short term capital gain amounting to Rs. 46,07,886/-. Penalty proceedings initiated u/s 271(l)(c) of the Act for filing inaccurate particulars, after recording satisfaction in the assessment order. The penalty was also imposed towards the disallowance of Rs. 4,778/- as difference in income as per ITR and computation by appellant. It appears that appellant has not agitated this addition before the appellate form, thereby accepting the additions so made.

5.2 During appellate proceedings, in ground no. 1, it was contended by the appellant, as reproduced that AO has erroneously imposed the penalty and disputed the additions made, mentioning that the purchase price and other subsequent payments are duly reflected in the books and therefore, no inaccurate particulars have been furnished. The appellant also relied upon various judgments to emphasis that the disallowance cannot be construed as furnishing inaccurate particulars of income, merely because the appellant could not produce any document.

5.3 It is clear from the assessment order and subsequent submission in appeal that appellant is not in possession of the relevant documents to substantiate the cost and other expenditure thereon. In fact the appellant itself has stated that due to the closer of business, the appellant could not submit the documents as not available. In this regard, it is noteworthy that the case has been completed in the normal scrutiny and the appellant is required to keep the documents and there is no substantial time has elapsed. Therefore, non-submission of documents cannot be taken as a substantial argument, to the favour of appellant.

5.4 Further, the appellant has accepted the decision of AO, in the assessment order, and this appeal is not related to the additions made in the assessment order and penalty being a separate order, disputing disallowance at this stage will not help the appellant.

5.5 As the appellant could not substantiate the cost and genuineness of other expenditures related to the property, this is very clearly furnishing inaccurate particulars, thereby claiming losses, instead of actual long term capital gain, as held by the AO. Reliance is placed to the judgment by Hon'ble Delhi High Court in the case of CIT vs. Zoom Communications Pvt. Ltd. 327 ITR 51 and also KP Madhusudan vs. CIT, 251 ITR 99 (SC), Thakur Hariprasad vs. CIT, 167 ITR 603 (AP).

5.6 Therefore, looking to the facts and circumstances of this case and following the above referred judgments and as discussed in the foregoing paragraphs, no interference is made with reference to the imposition of penalty on additions amounting to Rs.78,95,407/-, @ 100% of tax sought to be evaded.”

4. The Assessee being aggrieved is in appeal before us. The Id. AR submitted that the order under challenge is not only perverse but also suffers from impropriety and illegality, hence liable to be set aside. On the contrary, the Ld. Sr. DR vehemently supported the impugned order and submitted that impugned order is a judicious, logical, proper and reasoned order hence needs no interference.

5. Heard the parties and perused the material available on record. It appears from the orders passed by the authorities below that the addition of Rs.78,95,407/- was made on account of not furnishing the documentary evidence regarding the value of property and other expenses incurred. The Assessee had shown capital loss of Rs.32,87,521/- on the sale of property, however, the AO in the absence of evidence recomputed the same and determined the short term capital gain of Rs.46,07,886/-and made the addition of Rs.79,00,185/- and consequently, also initiated the penalty proceedings for filing inaccurate particulars of income and

vide penalty order dated 29.06.2017, imposed the penalty of Rs.24,41,157/- on the basis of addition of Rs.79,00,185/- (78,95,407/- + 4778/-).

5.1 The Assessee before us demonstrated (as appears from paper book which was available before the authorities below as per certificate of the Assessee) that the Assessee has shown the amount of Rs.91 lacs with regard to purchase price of property i.e. LG 24 DLF South Point, Gurgaon as on 01.04.2009, 31.03.2010 and upto 01.04.2011 and thereafter made the addition in the value of property to the tune of Rs.12,83,987/- during the F.Y. 2011-12 and shown the cost of property to the tune of Rs.1,03,83,987/- as on 31.03.2012.

5.2 Further, the Assessee also drew our attention to page No. 10 and 11 of the paper book wherein the amount of Rs.50 lacs as on 23.02.2008 has been shown as amount financed in respect of the property under consideration and on the same date vide cheque No. 0192288 having paid Rs.49,99,650/- on account of the same property. The Assessee also invited our attention to the conveyance deed executed on 11.07.2013 (page No. 12 to 17 of the paper book) wherein value for the purpose of stamp duty of the property has been clearly shown as Rs.1,01,04,000/-. In the conveyance deed, the Assessee has further shown to have given undertaking to pay Rs.1,26,69,184/- to the vendor additionally.

5.3 The said documents goes to show that almost all the relevant details, may not be in the form of documents specifically qua expenditures incurred, otherwise available before the Assessing Officer for consideration.

5.4 Even the Hon'ble Apex Court in the case of CIT Vs. Reliance Petro Products (P) Ltd. 322 ITR 158 (2010) held that *"a meremaking of the claim, which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars. The Assessee has furnished all the details of its expenditure as well as its income in his return, which details in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It is up to the authorities to accept its claim in the return or not. Merely because the Assessee had claimed the expenditure which claim was not accepted or was not acceptable to the revenue, that by itself would not attract the penalty u/s 271(1)(c). If the contention of the revenue is accepted then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the Assessee will invite penalty u/s 271(1)(c) and it dearily not the intendment of the legislature"*. Hence, considering the peculiar facts and circumstances, as the Assessee had already closed down its business and therefore, could not file the part documents as required by the Assessing Officer, however, from the documents produced, it is apparently clear that required details with regard to the purchase price/value of the property was available before the authorities below and even also we find the claim made by the Assessee as bona fide and therefore cannot be termed as dishonest or mala fide, hence we are of the considered view that in facts and circumstances and the documents available on record as stated above, no penalty is leviable. Even otherwise we also do not find any material/reason or justification for levy of penalty and affirmation thereof. Consequently, the penalty under challenge is deleted.

5. In the result, the appeal of the Assessee stands allowed.

Order pronounced in the open court on 09/09/2022.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-