

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 8028/Del/2019  
Assessment Year: 2015-16**

Amber Trader Private Ltd.,  
C/o Rohittiwari, 8024, ATS  
Greens Paradiso , CHI IV,  
Noida.

**PAN: AAFFA2656M**  
(Appellant)

Versus DCIT, Circle 2(2),  
New Delhi

(Respondent)

Appellant by : Sh. Rohit Tiwari, Ld. Adv.  
Sh. Akash, Ld. Adv.

Respondent by : Sh. Kanav Bali, Ld. Sr. DR

Date of hearing : 11.10.2022

Date of order : 10.10.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 10.06.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-1, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

**2.** In the instant case, the assessment order u/s. 143(3) of the Act was passed on dated 31.12.2017, whereby the income of the Assessee was determined at Rs.(-)30,76,835/- instead of Rs.(-)38,88,990/- as declared by the Assessee. The Assessing Officer also made the addition of Rs.8,10,000/- u/s. 68 of the Act on account of unexplained cash credit in bank accounts of the directors advancing the share application money to the Assessee just before advancing the share application amount. The Assessing Officer further made disallowance of Rs.2155/- on account of interest on TDS.

**2.1** The Assessing Officer also initiated penalty proceedings u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income and concealing of particulars of income. Subsequently, the Assessing Officer by issuing a notice u/s. 271(1)(c) of the Act afforded an opportunity to the Assessee to explain the claim of expenses to the tune of Rs.8,10,000/- as cash deposit component of the share application money and the amount of Rs.2155/- as interest u/s. 201(1A) or section 206C(7) of the Act.

**2.2** The Assessee during the course of assessment proceedings and in the penalty proceedings as well has not submitted any justification for the claim of expenses in its financials, therefore, the Assessing Officer observed that had the case of the Assessee not been selected for scrutiny and its claim of share application money and expenses on account of interest on TDS, as provided in the Act not verified, the taxable income of the Assessee would have remained under-assessed. Additionally, had the Assessee's case not been selected for scrutiny, the Assessee would have reaped the benefits of an incorrect claim. Therefore, it is clear that the

provisions of section 271(1)(c) of the Act are attracted in the case of the Assessee. Ultimately, the Assessing Officer levied the penalty of Rs.2,50,955/- on the additions of Rs.8,10,000/- and 2,155/- for furnishing inaccurate particulars of income.

**3.** The Assessee being aggrieved preferred first appeal before the Id. Commissioner and claimed as under:

*That share application money of Rs.73,50,000/- outstanding as on 31.03.2015 out of which 73,10,000/- received during the relevant financial year from two applicants and the amount was received through account payee cheques or banking channel. Both the applicants are directors/promoters of the company. During the assessment proceedings, the Assessee filed confirmation letter, bank passbook, identity proof and source of funds in the hands of depositors. Both the directors were also produced before the Assessing Officer and their statements on oath were recorded. In the statements, both the directors admitted lending to Assessee Company in the shape of share application. Fund was utilized for business purposes to make payments to creditors and arranged by the directors, so genuineness of the transaction was proved. The Assessing Officer added Rs.8,10,000/- in the hands of the Assessee, as this amount was deposited in cash in the bank account of the Assessee. The Assessee did not prefer any appeal against the said quantum order, as the loss claimed was reduced and there was no tax burden on the Assessee. However, still the Assessing Officer imposed penalty of Rs.2,50,955/- u/s. 271(1)(c) of the Act. As the*

*Assessee completely discharged its burden u/s. 68 of the Act by proving identity, creditworthiness of the depositors and genuineness of the transaction and the Assessing Officer has not disputed these elements, but only doubted the cash deposit in the bank account of the Assessee and added only this amount and not the whole deposit. In the penalty proceedings, the facts and circumstances should be considered afresh from a different angle and for that the findings arrived in the assessment proceedings will not be enough for imposing penalty. On reappraisal of facts and circumstances, there should be a conscious and wilful default on the part of the Assessee which results in unlawful withholding of revenue. By no stretch of imagination, mere failure of the Assessee can be equated with such conscious and wilful default. The burden of proof lies on the Assessee to prove that the Assessee had acted in a bona fide manner and there is no conscious default.*

**3.1** The Assessee in support of its case, also relied upon various judgments of the higher Courts.

**4.** The Ld. Commissioner affirmed the penalty to the extent of Rs.2,50,308/- qua addition of Rs.8,10,000/- u/s 68 of the Act on account of cash deposit component of the share application money and deleted the penalty of Rs.647/- imposed qua disallowance of Rs.2155/- towards interest on TDS by concluding as under :

“7.1 In the case of CIT v Zoom Communication (P) Ltd [2010] 191 Taxman 179 (Delhi) Hon’ble High Court of Delhi has held as under:

19. *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) would come into play and work to the disadvantage of the assessee.*

20. *The Court cannot overlook the fact that only a small percentage of the Income-tax Returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a licence to unscrupulous assessee to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self-assessment under section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a mala fide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have.*

21. *We find that the assessee before us did not explain either to the Income-tax authorities or to the Income-tax Appellate Tribunal as to in what circumstances and on account of whose mistake, the amounts claimed as deductions in this case were not added, while computing the income of the assessee-company. We cannot lose sight of the fact that the assessee is a company which must be having professional assistance in computation of its income, and its accounts are compulsorily subjected to audit. In the absence of any details from the assessee, we fail to appreciate how such deductions could have been left*

*outwhile computing the income of the assessee-company and how it could alsohave escaped the attention of the auditors of the company.*

*22. The explanation offered by the assessee-company was not accepted either by the Assessing Officer or by the Commissioner of Income-tax (Appeals). The view of Income-tax Appellate Tribunal regarding admissibility of the deduction on account of written off of certain assets, under section 32(1)(iii) of the Act is wholly erroneous. The Tribunal has not recorded a finding that the explanation furnished by the assessee in respect of the deduction due to certain assets being written off was a bona fide explanation. The Tribunal has nowhere held that it was due to oversight that the amount of this deduction could not be added while computing the income of the assessee-company.*

*23. As regards deduction on account of Income-tax paid by the assesses, the Tribunal felt that since no person would claim the same as deduction, to evade payment of tax, the claim made by the assesses was not mala fide, in the absence of the Assesses company telling the Assessing Officer as to who committed the oversight resulting in failure to add this amount while computing the income of the assessee, under what circumstances the oversight occurred and why it was not detected by those who checked the Income-tax Return before it was filed and later by the auditors of the assessee-company, we cannot accept the general view taken by the Tribunal. In our view, no such view could have reasonably been taken, on the facts and circumstances prevailing in this case and, therefore, the decision of the Tribunal in this regard suffers from the vice of perversity. We cannot accept the general proposition that no person would ever claim the amount of Income-tax as a deduction with a view to avoid payment of tax. No hard and fast rule in this regard can be laid down and every case will have to be decided considering the facts and circumstances in which such a deduction is claimed, coupled with as to whether the explanation offered by the assessee for making the claim, is shown to be bona fide or not.*

*24. For the reasons given in the preceding paragraphs, we answer the question of law framed in this case in favour of*

*the revenue and against the assessee. The Income-tax Appellate Tribunal erred in law in deleting the penalty in respect of the amount of Rs. 1 lakh claimed as deduction on account of payment of Income-tax and the amount of Rs. 13,24,539 debited under the head 'Equipment written off, In the Profit and Loss Account of the assessee. The appeal stands disposed of, accordingly.*

*7.2 I have carefully considered the facts of the case and the submissions made by the appellant company. During the course of assessment, the AO noted that there is an increase in share application money pending allotment from Rs. 40,000/- on 31.03.2014 to Rs. 73,50,000/- on 31.03.2015. The AO also noted that the share application money of Rs. 73,10,000/- was received from two applicants namely Devender Kumar Mishra and Rishi Kumar Lavania who are also Directors of the appellant company. The AO noticed that there were cash deposits of Rs. 8,10,000/- in the bank accounts of the directors. The AO observed that the cash was deposited in the bank accounts of the directors just before the payment of share application amount. The appellant could not explain the source of cash deposits in the bank accounts of Sh. Devendra Kumar Mishra and Sh. Rishi Lavania, directors of the appellant company. The AO noted that the appellant was unable to establish the genuineness of the share application money and the creditworthiness of the directors. Accordingly, the amount of Rs. 8,10,000/- pertaining to the cash deposit component of the share application money was added to the income of the appellant u/s 68 of the Act. In the penalty order, the AO has observed that the appellant has furnished inaccurate particulars of its income and has concealed its income to the extent of Rs. 8,12,155/-. The AO has noted that this is a fit case for imposition of penalty for concealment of income and for furnishing inaccurate particulars of income amounting to Rs.8,12,155/- as per the provisions of Sec 271(1)(c) of the Act. I have carefully considered the facts of the case. The decision of Hon'ble High Court of Delhi in the case of CIT v Zoom Communication (P) Ltd (supra) is squarely applicable to the facts of the case. Respectfully following the decision of Hon'ble High Court of Delhi in the case of CIT v Zoom Communication (P) Ltd (supra), I hold that the AO is justified in levying penalty u/s 271(1)(c) on the amount of Rs. 8,10,000/- pertaining to the cash deposit component of the share application money which was added to the Income of the appellant u/s 68 of the Act. However, I am of the view that no penalty can be imposed on disallowance of Rs. 2,155/- towards interest on TDS. In view of it, the penalty of Rs 2,50,308/- imposed u/s 271(1)(c) is upheld and the appellant*

*gets the relief of Rs 647/-. The ground number 1, 2 & 3 of appeal are decided as above.”*

**5.** We have given thoughtful consideration to the conclusion drawn by the Ld. Commissioner in the impugned order and observe that the Ld. Commissioner without considering the submissions and judgments relied upon by the Assessee, passed the impugned order by relying on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication (P) Ltd. (2010) 191 Taxman 179 (Delhi). In fact, in the instant case the Assessee did not claim any deduction as involved in Zoom Communication case (supra) hence the said judgment being factually dissimilar, is not applicable to the instant case.

In this case, the addition of Rs. 8,10,000/- was made on cash deposit, which was used for share application money. We observe that the Assessee has clearly made adequate disclosure of all facts and it is also not a case here, of submitting a claim which is incorrect in law. There is also nothing on record either to suggest that the Assessee had not acted in a bona fide manner and committed conscious default and concealed any income or furnished inaccurate particulars. Simply the Assessee did not prefer any appeal against the said quantum order, if so fact would not lead to imposition of penalty. On the aforesaid analyses, in our considered view, the Assessee cannot be held guilty of furnishing of particulars of income, for the purpose of levy of penalty u/s 271(1)(c) of the Act, hence we are inclined to delete the penalty under consideration.

**6.** In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 28.10.2022.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-

Copy forwarded to:

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

Assistant Registrar  
ITAT New Delhi