

+IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.2111/Mum/2022
(Assessment Year 2013-14)

M/s Jawed Habib Hair and Beauty Studio Pvt Ltd, 1 st Floor, Nimbus Centre, Oberoi Complex, Off New Link Road, SAB TV Lane, Andheri (W), Mumbai-400 093 PAN : AAACC5009M	vs	ITO-10(2)(1), Mumbai Room No.408, Aayakar Bhavan, Mumbai-400 020
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Assessee represented by	None
Revenue represented by	Vrinda U Matkarni SR AR

Date of hearing	13/10/2022
Date of Pronouncement	11/11/2022

ORDER

Per : Kuldip Singh (JM):

The Appellant, M/s Jawed Habib Hair and Beauty Studio Pvt Ltd (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 28/06/2022 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for

Assessment Years 2013-14, respectively on the effective ground interalia that:-

“1.On the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) erred in upholding the penalty levied u/s 271(1)(c) of the IT Act of Rs.2,60,801/- by the Ld.AO and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made thereunder.”

2. Briefly stated, facts necessary for adjudication of the controversy in the appeal are: on the basis of completed assessment framed under section 143(3) of the Income-tax Act, 1961 (in short, ‘the Act’), penalty proceedings were initiated against the assessee company under section 271(1)(c) of the act on the ground that the assessee company has debited an amount of Rs.7,90,308/- under the head “bank charges & commission”, which the Assessing Officer has found not allowable expenditure, thus added the same to the total income of the assessee in furnishing inaccurate particulars of income. Declining the contention raised by the assessee during penalty proceedings, Assessing Officer proceeded to hold that the assessee is guilty of furnishing inaccurate particulars of its income of Rs.7,90,308/- and thereby levied the penalty of Rs.2,60,801/- being 100% of the tax sought to be evaded, under section 271(1)(c) of the Act.

3. Assessee challenged the penalty order by way of filing an appeal before Ld.CIT(A), who has confirmed the penalty levied by the Assessing Officer by dismissing the appeal.

4. On the basis of the appeal filed by the assessee, notice through registered cover (RPAD) was sent which received back unserved with the report that he has left the place of last address. It appears that

assessee is not interested in prosecuting the present appeal, so the bench has decided to dispose of the appeal on the basis of material available on record with the assistance of the Ld.DR for the Revenue.

5. We have heard the Ld.DR of the Revenue, gone through the documents available on record, order passed by the lower Revenue Authorities in the light of facts and circumstances of the case and the case law applicable thereto.

6. Undisputedly, assessee has duly claimed an amount of Rs.7,90,308/- by debiting the same in its P&L Account under the head "bank charges & commission". It is also not in dispute that the penalty proceedings under section 271(1)(c) of the Act were initiated by the Assessing Officer for furnishing inaccurate particulars of the income.

7. From the grounds raised by the assessee, undisputed facts, order passed by the lower revenue authorities and arguments advanced by the authorized representatives of both the parties, the sole question arises for determination in this case is:-

"as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?"

8. In the backdrop of the aforesaid undisputed facts, we are of the considered view that when assessee has duly furnished its claim qua an amount of Rs.7,90,308/- by debiting the same to the P&L Account under the head "bank charges & commission" in its return of income by applying best of his wisdom that these are the allowable expenses, but Assessing Officer has taken a different view that the same are not

allowable, there was no occasion for the assessee to furnish inaccurate particulars of the income. Setting up a claim by an assessee by placing on record the true and correct facts does not amount to furnishing of inaccurate particulars.

9. The Hon'ble Supreme Court in the case of CIT vs Reliance Petro Products Pvt Ltd 322 ITR 158 (SC), while interpreting the provisions contained under section 271(1)(c) of the Act decided the identical issue in favour of the assessee. Operative part of which is reproduced for ready reference as under:-

"A glance at the provisions of section 271(l)(c) of tl LT. Act, 1961 suggests that in order to be covered by i there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee mm have furnished inaccurate particulars of his income The meaning of the word "particulars" used in section 271(l)(c) would embrace the detail of the claim made Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Whereas there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot be amount to furnishing inaccurate particulars."

10. In view of what has been discussed above, we are of the considered view that when the Assessing Officer was the ultimate

authority to decide the claim of the assessee and the assessee's duty was to furnish the correct and true particulars as to the best of his wisdom, provisions contained under section 271(1)(c) are not attracted. So the Assessing Officer has failed to make out a case of furnishing of inaccurate particulars of such income by the assessee to levy the penalty, rather it is a case of imposing penalty on the basis of subjective satisfaction, the penalty levied by the Assessing Officer and confirmed by the Ld.CIT(A) is not sustainable in the eyes of law, hence order to be deleted.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on ____/11/2011.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Mumbai, Dt : 11th November, 2022

Pavanan

sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR,SMC Bench
6. Guard File

(True copy)

By order

Dy.Registrar / Asstt.Registrar
ITAT, Mumbai Benche