

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H”: NEW DELHI**

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

ITA No. 4761/Del/2019
Asstt. Year: 2013-14

DCIT, Circle-13(1) New Delhi.	Vs.	Jagson International Ltd. 3 rd Floor, Vandana Building, 11, Tolstoy Marg, Connaught Place, New Delhi – 110 001 PAN AAACJ2147A
(Appellant)		(Respondent)

Assessee by:	Shri Rajiv Saxena, Advocate Ms. Sumangla Saxena, Advocate
Department by :	Shri M. Baranwal, CIT (DR)
Date of Hearing	02.12.2022
Date of pronouncement	06.12.2022

ORDER

PER ASTHA CHANDRA, JM:

The appeal by the Revenue is directed against the order dated 27.02.2019 of the Ld. Commissioner of Income Tax (Appeals) – 5, New Delhi (“**CIT(A)**”) pertaining to assessment year (“**AY**”) 2013-14.

2. The Revenue has taken the following ground:-

“Whether the Ld. CIT(A) has erred in facts and in law in deleting the penalty under section 271(1)(c) of Rs. 55,58,014/- without considering the fact the assessee company has furnished inaccurate particulars of income while furnishing Income Tax Return for the year under consideration”.

3. The relevant facts are these. The assessee company is engaged in the business of shipping and storage. For AY 2013-14 the assessee filed its return electronically on 28.09.2013 declaring income of Rs. 4,31,10,420/-. The Ld. Assessing Officer ("**AO**") completed the assessment on 30.11.2015 determining the total income at Rs. 88,28,58,120/- including therein certain additions / disallowances. He initiated penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 (**the "Act"**). On appeal by the assessee before the Ld. CIT(A) the disallowance of Rs. 89,89,571/- on account of section 14A; addition of Rs. 2,00,000/- on account of provision for gratuity, addition of Rs. 57,38,564/- on account of difference in 26AS and addition of Rs. 22,02,437/- on account of short term capital gain were confirmed by the Ld. CIT(A) vide his appellate order dated 23.12.2015. In response to penalty notices under section 271(1)(c) issued on 30.11.2015 and 03.03.2017 no reply was made by the assessee. The Ld. AO therefore passed order on 28.03.2017 imposing penalty of Rs. 55,58,014/- under section 271(1)(c) of the Act for furnishing inaccurate particulars of income against which the assessee filed appeal before the Ld. CIT(A).

4. The assessee made lengthy submission before the Ld. CIT(A) during penalty proceedings which has been incorporated by the Ld. CIT(A) in para 5 of his appellate order in Appeal No. Del/CIT(A)-5/0004/2017-18 dated 27.02.2019. On consideration thereof the Ld. CIT(A) reached the conclusion that the impugned penalty under section 271(1)(c) of the Act for furnishing inaccurate particulars is not imposable and directed deletion thereof allowing the appeal of the assessee. The relevant observations and findings of the Ld. CIT(A) are extracted hereinbelow:

"6.3 In its submission, the appellant has vehemently argued on each addition and contended that appellant is covered under the tonnage tax scheme and therefore the tax free income is to be increased to that extent If the same is increased then there will not be any effect on the taxes as it is exempt income. Therefore it is tax neutral. It is seen from the order giving effect u/s 250 of the Act dated 29.01.2016 to the order of CIT(A) for the year under consideration that the disallowance under 14A has been allowed under

tonnage tax amounting to Rs. 89,89,571/— and reduced from the taxable income.

6.4 The appellant has also argued on the merits of each addition. It is stated for the disallowance of Rs. 89,89,571/- u/s 14A of the Act that there is no furnishing of inaccurate particulars of income because all the details have been duly disclosed to the AO and no tax evasion has been established by the AO. Apart from that, as discussed earlier, the addition is covered with exemption in tonnage tax scheme and there is no revenue effect so no tax has been evaded. It is also stated that the matter regarding benefit of tonnage tax have already been decided in the favor of appellant. In this regard it is worthwhile to reproduce the order of CIT(A) 5, in the case of appellant for the AY 2011-12 and 2012-13 as follows

"...Suffice it to say that the Hon'ble Delhi High Court in the appellant's own case for A.Y. 2006-07 has upheld the ITAT order that the Deep Sea Matdrills owned by the appellant were to be considered as 'qualifying ships' in accordance with section 115VD. The question that arises, therefore, is whether any disallowance made u/s 14A is mandated as the same would automatically enhance the income of the appellant but the same would, in any case, be exempt under the provisions of Chapter XIIG. It is claimed that the Bombay ITAT in the case of Varun Shipping Co. Ltd. (144 TTJ 286) has upheld the stand of the assessee in this regard. Since the major part of the income is derived from shipping business, any disallowance u/s 14A would automatically be allowable while computing income under the tonnage scheme. I find that the CIT(A) for the A.Y. 2007-08 in appeal no. 119/2009-10 has relied on the Delhi High Court's decision in the case of Sh. Ram Pistons and Rings Ltd. in giving direction to the AO while sustaining the addition made u/s 14A, that the benefit of tonnage tax scheme may be given on the finally determined income. The department, as per the appellant, has not challenged this particular finding of the CIT(A) before ITAT. For the A.Y. 2008-09 also, the disallowance u/s 14A has been upheld. On the other hand the Ld. CIT(A) for the A.Y. 2009-10 to 2011-12 has taken the view that since the appellant gets the benefit of tonnage tax u/s 115VP read with section 115 VR, the disallowance u/s 14A is not warranted."

6.5 With regard to the disallowance on account of provision of gratuity of Rs. 2,00,000/- it is contended that all the facts have been mentioned, while submitting the return and on the similar ground in AY 2012-13, penalty was levied by AO, which was deleted by the then CIT(A) 5, by following the decision of Hon'ble Supreme Court and various High Courts. The appellant provided a copy of order dated 02.08.2018 in the case of appellant for AY 2012-13 where the CIT(A) has held that:-

"...It is clear from facts that the claim not being allowable was clearly mentioned in the tax audit report. Therefore, prima facie no facts were concealed since the tax audit report was also filed by the appellant. The claim per se may be incorrect but the action of the appellant can't be held of such nature wherein the appellant had concealed facts or had furnished inaccurate particulars. As a result penalty u/s 271(l)(c) is not liable to be charged."

6.6 With regard to the addition of difference between interest declared in the books of accounts and shown in form 26AS, it is contended that the bank declared interest as per their accounting and appellant has shown interest in accordance with its calculation and the amounts of deposits are clearly reflected by the appellant in the books. The difference is due to the reason that different calculation was made by the appellant and the bank. Form 26AS was subsequently received, which was not considered by the accountant and resulted into the difference in reporting total income. It is also stated that the income which has been not shown would have been shown in subsequent year and the appellant having highest slab of tax has no effect and hence there is no concealment.

6.7 With regard to the addition on declaring short term capital gain as long term capital gain, it is stated that this is shown due to error on the part of accountant which was detected during assessment proceedings and declared this income before AO, accepting the error.

6.8 It is observed that in all the cases of addition, either it is tax neutral due to the tonnage tax or the information declared, however not shown as income. It is also seen that there was no intention to conceal any such particulars. In the case of Reliance Petro Products, reported in 322ITR 158, the Hon'ble Supreme Court has held that

*"...We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(l)(c) of the Act. **A mere making of the claim, which is not sustainable in laws, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.** Such claim made in the Return cannot amount to the inaccurate particulars."*

6.9 In various case laws it has been held that mere disallowance of claim will not automatically result into imposition of penalty. In the case of Price Waterhouse Coopers Pvt Ltd., 25 taxmann.com 400(SC), the Hon'ble Supreme Court has held that if the information has been disclosed in the tax audit report then merely because it is disallowed it cannot be considered as

furnishing inaccurate particulars of income or attempting to conceal its income and imposition of penalty is not justified.

6.10 it is seen in the case of appellant that the information was duly disclosed or submitted during the assessment proceedings and therefore this cannot be taken as concealment of income.

6.11 Therefore looking to the facts and circumstances of this case and in law where disallowance u/s 14A is covered by tonnage tax and tax neutral, other disallowances are either disclosed in the accounts or in audit and no bona fide of furnishing inaccurate particulars of income has been established, it is held that the penalty is not imposable and directed to be deleted.”

5. Aggrieved, the Revenue is in appeal before the Tribunal.

6. The Ld. CIT (DR) took pains to defend the Ld. AO's action. He submitted that the assessee had not made suo-moto disallowance under section 14A of the Act. Justifying levy of penalty on this count and for disallowance on account of provision for gratuity, the Ld. CIT(DR) placed reliance on the decision in UOI vs. Dharmendra Textile Professors (2008) 166 taxman.65(SC). Regarding difference in interest as per Form 26AS, the Ld. CIT(DR) submitted that every assessment year is separate. As to the addition on account of short term capital gain, the Ld. CIT(DR) submitted that the assessee had put up a lame excuse that it was mistake of the accountant. According to him the Ld. CIT(A) erred in deleting the impugned penalty.

7. The Ld. AR on the other hand supported the order of the Ld. CIT(A). He submitted that the assessee is in the business of operation of ships and is governed by Tonnage Tax Scheme and not by normal provisions of the Act. He submitted that even if disallowance under section 14A is made, it would be an allowance while computing income under Tonnage Tax Scheme. So there will be no tax effect. Regarding disallowance on account of provision for gratuity, the Ld. AR submitted that penalty levied on this count was deleted by the Ld. CIT(A) in AY 2012-13 and the Revenue is not in appeal. He further submitted that difference in interest declared and shown

in Form 26AS was only due to difference in system of accounting by the Bank and the assessee and no incorrect particulars were submitted. Regarding short term capital gain, the Ld. AR submitted that it was an error by the accountant which was corrected during quantum appeal proceeding as soon as the assessee found the error and derived support from the decision in Price Waterhouse Coopers (P) Ltd. vs. CIT (2012) 25 taxmann.com 400 (SC) wherein it is held that bonafide error or an inadvertent mistake would not attract penalty under section 271(1)(c) of the Act.

8. We have carefully considered the rival submissions and perused the material in the records. Perusal of the penalty order dated 28.03.2017 would reveal that the penalty proceedings were initiated on the ground that the assessee had furnished inaccurate particulars of its income. In CIT vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC) the phrase “inaccurate particulars of the income” came up for consideration before the Hon’ble Supreme Court wherein their Lordships observed that as per Law Lexicon, the meaning of the word “particular” is a detail or details (in plural sense); the details of a claim or the separate items of an account. Therefore, the word “particulars” used in section 271(1)(c) would embrace the meaning of the details of the claim made. The Hon’ble Supreme Court further observed that the word “inaccurate” has been defined in Webster’s Dictionary as “not accurate, no exact or correct; not according to truth etc.”. Reading the word “inaccurate” in conjunction with “particulars” would mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. The Hon’ble Supreme Court went on to observe further that 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 under section 271(1)(c) of the Act. In Pr. CIT vs. Sesa Goa Ltd. (20.21) 439 ITR 188 (Bom), The Hon’ble Bombay High Court held that an erroneous claim simplicitor does not automatically attract penalty and it is only when an erroneous claim is

based on a deliberate misrepresentation of facts or deliberate suppression of relevant material facts that penalty is imposed after deduction is denied.

9. In the backdrop of the principles of law as set out in the above precedent, it would be obvious that on facts none of the disallowance / addition justifies levy of penalty under section 271(1)(c) for furnishing inaccurate particulars of its income. It is not in dispute that Tonnage Tax Scheme applies to the assessee as held by the Hon'ble Delhi High Court in assessee's case pertaining to preceding years which has been followed by the Tribunal for AY 2013-14 as well. If that be so any disallowance under section 14A would automatically be allowable while computing income under the Tonnage Tax Scheme. Moreover, since all details have been disclosed and no inaccuracy has been pointed out by the Revenue, it cannot be said that any inaccurate particular has been furnished by the assessee.

10. As regards disallowance on account of provision of gratuity, the Ld. CIT(A) has followed the decision of his predecessor for AY 2012-13 wherein it is observed that the claim per say may be incorrect but in view of tax audit report accompanying the Return, it cannot be said that the assessee has furnished inaccurate particulars inviting levy of penalty under section 271(1)(c) of the Act. Facts remaining the same for AY 2013-14, penalty for furnishing inaccurate particulars is not warranted as the contention of the Ld. AR that the department has accepted the decision of the Ld. CIT(A) in the preceding year deleting the penalty has not been controverted before us.

11. So far as the addition of difference between interest declared in books and shown in Form 26AS is concerned, the explanation of the assessee may not be convincing but the facts remain that the amount of deposits have duly been reflected in assessee's books of account and a bonafide mistake on the part of the accountant not to tally the interest calculation with Form 26AS cannot lead to the conclusion that the assessee furnished inaccurate particulars of its income so as to justify levy of penalty under section 271(1)(c) of the Act.

12. Lastly, declaration of long term capital gain instead of short term capital gain has been accepted by the Ld. CIT(A) due to error. As held by the Hon'ble Bombay High Court in the case of Sesa Goa Ltd. (supra) an erroneous claim simplicitor does not automatically attract penalty unless there is deliberate misrepresentation of facts which has not been found in the case of the assessee and the error was rectified during assessment proceedings itself.

13. The Ld. CIT(A) has finally recorded a finding of fact that on the facts and in the circumstances of the case and in law, the impugned penalty is not imposable. We are inclined to concur with his findings. Accordingly, the appeal of the Revenue is rejected.

14. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 6th December, 2022.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 06/12/2022

Veena

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	

Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Bench Clerk	
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