

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.7822/DEL/2019
Assessment Year 2013-14

M/s. Abhinav International P. Ltd., E-93, 3 rd Floor, GK Enclave-I, New Delhi.	v.	DCIT, Circle-1(1), New Delhi.
TAN/PAN: AADCA8631P		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Kanav Bali, Sr.DR		
Date of hearing:	16	01	2023
Date of pronouncement:	23	01	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been directed against the appellate order of the Commissioner of Income Tax (Appeals)-I, New Delhi ['CIT(A)' in short] dated 26.08.2019 arising from penalty order passed by the Assessing Officer dated 19.01.2018 wherein the penalty of Rs.30,53,710/- on the quantum additions of Rs.98,82,556/- sustained in the appellate proceedings was imposed on account of certain disallowances and additions.

2. In the first appeal, the CIT(A) noticed that penalty under Section 271(1)(c) was imposed on four counts.

- (i) Disallowance of Rs.365546/- under Section 14A
- (ii) Disallowance of interest of Rs.60,72,432/-
- (iii) Addition of Rs.34,38,000/- under Section 56(2)(viib)

and;

- (iv) Interest on late deposit of TDS wrongly claimed at Rs.6,578/-

2.1 The CIT(A) concluded in paragraph 7.3 of its order that no penalty should be imposed for disallowances under Section 14A of the Act. On the remaining amount of Rs.95,17,010/-, the CIT(A) sustained the penalty alleging furnishing of inaccurate particulars of income by the assessee.

4. Aggrieved by the action of the CIT(A), the assessee filed appeal before the Tribunal.

5. When the matter was called for hearing, none appeared for the assessee. It appears from the record/order sheet that no one has appeared for the assessee on any of the occasions. Having regard to the totality of the circumstances and lackadaisical conduct of the assessee, the matter is proceeded *ex-parte* in the absence of the assessee.

6. The CIT(A) took note of the submissions of the assessee and found complete lack of merit in the plea of the assessee except for the disallowance under Section 14A. The CIT(A) sustained the penalty on the remaining additions. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

“7. *Decision:*

7.1 *In the present case, assessment u/s 143(3) of the I.T. Act, 1961 was completed on 19.02.2016 after making the following additions:*

<i>Disallowance u/s 14A:</i>	<i>Rs. 21,33,361/-</i>
<i>Disallowance of interest (Rs. 16,90,392) and loan processing fee (Rs. 43,82,040) for money borrowed and not used for the business of the appellant:</i>	<i>Rs.60,72,432/-</i>

Addition for excess of money received as share application money over the fair market value of shares:Rs. 34,38,000/-

Ld. CIT (Appeals) passed order in the case in Appeal No. 411 /15-16 on 09.11.2016 and the appeal of the appellant was partly allowed. Ld. CIT has sustained the additions made by the AO under different heads as under:

Issue	Addition made in assessment order	Outcome in order by Ld. CIT (Appeals)
<i>Disallowance u/s 14A</i>	<i>Rs. 21,33,361/-</i>	<i>Addition restricted to Rs. 3,65,546/- by reducing addition made under Rule 8D (2)(iii)</i>
<i>Disallowance of interest (Rs. 16,90,392) and loan processing fee (Rs. 43,82,040) for money borrowed and not used for the business of the assessee:</i>	<i>Rs. 60,72,432/-</i>	<i>Appeal on this ground dismissed and addition increased to Rs. 79,08,068/-</i>
<i>Addition for excess of money received as share application money over the fair market value of shares:</i>	<i>Rs. 34,38,000/-</i>	<i>Appeal on this ground dismissed</i>
<i>Disallowance of interest on late deposit of TDS:</i>	<i>Rs. 6,578/-</i>	<i>No appeal filed on this ground</i>

7.2 The appellant filed further appeal before the Income Tax Appellate Tribunal against the order of Ld. CIT (Appeals). Hon'ble ITAT, Delhi has upheld the appellate order passed by Ld. CIT(A). In the present case, the appellant earned dividend income of Rs. 54,84,140/- during the year from investment in shares which was claimed as exempt. The assessing officer made the addition of Rs. 21,33,361/- u/s 14A for expenses relating to exempt income as per Rule 8D. The total disallowance made under Section 14A was reduced from Rs. 21,33,361/- to Rs, 3,65,546/- by the Ld. CIT (Appeals). The assessing officer made the addition of Rs, 60,72,432/- on account of claim of interest on loan taken and processing fees on the loan taken which was utilized for loans and advances given to its sister concerns as the expense was not incurred for business purposes. Ld. CIT (Appeals) held in his order that since the disallowance for interest made under Rule 8D(ii)

had already been reduced from Rs. 16,90,392/- to Rs. 67,821/-, entire amount of interest of Rs. 35,26,028/- and loan processing fee of Rs. 43,82,400/- had to be disallowed. Thus the disallowance of Rs. 60,72,432/- made by the assessing officer was increased to Rs. 79,08,068/- (Rs. 35,26,028 + Rs. 43,82,040) by Ld. CIT (Appeals). The assessing officer made addition of Rs. 34,38,000/- for the amount of share premium received, by it over the amount of fair market value of shares. The appellant issued 90,000 equity /shares of face value of Rs. 10 each at a premium of Rs 40 per share during the year. The assessing officer did not accept the value of Rs. 71.04 submitted by the appellant and made addition of Rs. 34,38,000/- u/s. 56(2)(viib) being the excess of amount received on allotment of shares above the fair ,market value. Ld. CIT (Appeals) confirmed this addition as the appellant did not submit any evidence in support of its claim of for valuation of shares at Rs. 71.04 per share. The appellant paid interest of Rs. 6,574/- on late deposit on TDS which was claimed as expense. The Assessing Officer disallowed this expense as it is not allowable. No appeal was filed by the appellant on this issue. The AO has made the following chart for the purpose of levying penalty u/s.271(1)(c) in the instant case:

Issue	Amount of income on which tax sought to be evaded
Income u/s 14A read with Rule 8D	Rs. 3,65,546/-
Amount of interest (Rs. 16,90,392) and processing fee (Rs.43,82,040) for money borrowed and not used for the business of the assessee. Wrongly claimed.	Rs. 60,72,432/-
Income u/s. 56(2)(viib) not declared	Rs.34,38,00/-
Interest on late deposit of TDS wrongly claimed	Rs.6,758/-
Total	Rs.98,82,556/-

In the penalty order the AO has held that the appellant is liable for penalty u/s 271(1)(c) of the Income Tax Act, 1961 of an amount equal to the amount of tax sought to be evaded on income of Rs. 98,82,556/- about which inaccurate particulars were furnished by the appellant. The penalty of Rs. 30,53,710/- has been levied by the AO u/s. 271(1)(c) in the instant case.

7.3 Considering the facts of the case, I am of the view that no penalty should be imposed on disallowance u/s. 14A. Section 56(2)(viib) is an anti abuse provision and any addition u/s. 56(2)(viib) is liable for penalty u/s. 271(1)(c). As regards the disallowance of interest, it is found that the appellant company has taken interest bearing loan and given it as interest free loan to its

sister concerns. The appellant has also paid huge processing fee for raising these loans. However, the loan taken by the appellant company was not utilized for the purpose of the business of the appellant company. These loans were diverted to sister concerns without charging any interest or fees. The appellant has incurred the expenses on account of (i) the interest of Rs. 16,90,392/- on loan and (ii) the processing fee of Rs.43,82,040/- for raising the loans which were not never utilized for the business of the appellant. Considering the facts of the case, it is held that the appellant has furnished inaccurate particulars of income to the extent of Rs. 95,17,010/-. Accordingly, it is held that the appellant is liable for penalty u/s. 271(1)(c) of The Act. In this regard, I would like to rely on the following judicial pronouncements:

“[2014] 51 taxmann.com 523 (Delhi), HIGH COURT OF DELHI, Commissioner of Income-tax v. Kalindi Rail Nirman Engg. Ltd.

“Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of Income (In case of estimation of profit) - Assessment year 1995-96 - Assessee was a contractor and assessee declared its income at an estimated 3 per cent of contract receipts - Search took place in assessee's premises and in view of seized materials Assessing Officer gave due opportunity to assessee to justify disclosed income and explain discrepancies noticed by special auditor - Assessee was also permitted to inspect seized documents - Despite that assessee could not explain said discrepancies - Accordingly Assessing Officer resorted to estimation of profits by adopting 11 per cent on gross contract receipts and initiated penalty proceedings - Whether there was gross or wilful negligence on part of assessee in failing to return correct income, penalty would be levied under section 271(1)(c) - Held, yes [Para 12] [In favour of revenue]”

[2014] 52 taxmann.com 66 (Delhi), HIGH COURT OF DELHI, Commissioner of Income-tax v. Global Associates.

“Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income (Disallowance of claim, effect of) - Assessment year 2008-09 - Assessee debited an amount towards liquidated damages - Assessing Officer observed that computation of liquidated damages was done on basis that 3 lakhs MT of iron ore fines were to be supplied to overseas purchasers while, in fact, as per agreement between them actual agreed quantity was 2.85 lakh MT - Explanation of assessee that figure of 3 lakh MT included moisture content, was also not borne out from record; it also did not appear to be a part of any condition agreed to between parties - Whether claim of excess liquidated damages amounted to furnishing of inaccurate particulars and, hence, levy of penalty was justified - Held, yes [Para 6] [In favour of

revenue].”

[2013] 37 taxmann.com 347 (Delhi), HIGH COURT OF DELHI, Commissioner of Income-tax v. HCIL Kalindee Arsspl.

“Section 271(1)(c), read with section 80-IA, of the Income-tax Act, 1961 - Penalty - For concealment of income [Wrong claim under section 80-IA] - Assessment year 2007-08 - Assessee's claim for deduction under section 80-IA was rejected by Assessing Officer on ground that assessee was executing works contract - Assessing Officer also Imposed penalty under section 271(1)(c) - Tribunal deleted penalty holding that claim for deduction under section 80-IA was duly supported by certificate of chartered accountant in prescribed form and, hence, bona fide - Whether merely because assessee complied with statutory procedural requirement of filing prescribed form and certificate of Chartered Accountant, it could not absolve assessee of its liability, if act or attempt in claiming deduction was not bona fide - Held, yes - Whether to show and establish bona fides, assessee had to show some more 'tangible material' or basis as to why a clear statutory provision which excludes works contract was ignored - Held, yes - Whether since assessee had not been able to establish that it had acted bona fide, deletion of penalty by Tribunal was unjustified - Held, yes [Paras 10, 11 & 13] [In favour of revenue].”

[2013] 38 taxmann.com 448 (SC), SUPREME COURT OF INDIA, MAK Data (P.) Ltd. v. Commissioner of Income-tax - II

Voluntary disclosure does not release assessee from mischief of penal proceedings under section 271(1)(c)

In terms of section 271(1)(c), Assessing Officer has to satisfy whether penalty proceedings be initiated or not during course of assessment proceedings and Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing

Where offer of surrender of certain amount received as share application money was made by assessee in view of detection made by Assessing Officer in search conducted in case of assessee's sister concern, said surrender of income not being voluntary in nature, authorities below were justified in levying penalty under section 271(1)(c).”

Commissioner of Income-tax v. NG Technologies Ltd. [2015] 57 taxmann.com 389 (Delhi), HIGH COURT OF DELHI

“Section 271(1)(c), read with section 28(i), of the Income-tax Act, 1961 -Penalty - For concealment of income (Disallowance of claim, effect) -Assessment year 2006-07 - Whether where assessee

claimed loss on sale of fixed assets in profit and loss account which was a capital loss, same was contrary to basic principles of accountancy - Held, yes - Whether since assessee did not file revised return for same voluntarily but had filed revised return after Assessing Officer confronted assessee and they were asked to explain claim of loss in question in profit and loss account penalty under section 271(1)(c) was sustainable - Held, yes [Paras 17 and 20] [In favour of revenue], ”

The above decisions are squarely applicable to the facts of the present case. Considering the facts of the case, I am of the view that the provisions of section 271(1)(c) of the Act are attracted in the case of the appellant. It is already held that penalty should not be imposed on disallowance of Rs 3,65,546/- u/s 14A. Excluding the disallowance u/s 14A, the remaining disallowance comes to Rs 95,17,010/- of Rs. 98,82,556/- Rs 3,65,546/-). The provisions of section 271(1)(c) are attracted to the disallowance of Rs 95,17,010/-. In view of it, it is held that the provisions of section 271(1)(c) are attracted to the disallowance of Rs 95,17,010/- for furnishing inaccurate particulars of income as discussed above in the instant case. Accordingly, the penalty of Rs 29,40,760/- imposed u/s 271 (1)(c) is upheld in the instant case and the appellant gets a relief of Rs 1,12,950/-. Ground No. 2 is partly allowed.

7.4 Ground No. 1 & 3 are general in nature and do not require any adjudication.

8. In the result, appeal of appellant bearing Appeal. No. 506/17-18 is partly allowed.

7. Before us, none appeared as noted above. On the perusal of the submissions made by the CIT(A), it is noted that the assessee has failed to place cogent evidence that interest incurred on loan and advances given to its sister concern were incurred for the business purposes. The loan and allowances were given without charging any interest which has resulted in incurring burden on account of advances given to sister concern in violation of Section 36(1)(iii) of the Act. Likewise, before the CIT(A), the assessee has failed to defend inapplicability of Section 56(2)(viib) of the Act. It is not borne out from the records as to why Section 56(2)(viib) is not applicable or the alternative provisions of

Section 271(1)(b) is not attracted in the facts of the case. Same is a case in respect of late deposit on TDS. Thus, in the absence of any material on record, it is difficult to conceive plausibility in the action of the assessee. We thus decline to interfere.

8. As per its grounds, the assessee has also alleged that notice issued for imposition of penalty does not specify the nature of default and thus entire penalty proceedings is required to be quashed at the threshold. No penalty notice is available on record. No such objection was raised before lower authorities either. We thus are in no position to express our view on such contentions.

9. In the result, the appeal of the assessee is dismissed *ex-parte*.

Order pronounced in the open Court on 23/01/2023.

Sd/-
[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: /01/2023

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER