

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.354/Ind/2022**  
**(Assessment Year:2012-13)**

Turning Point Estates Pvt. Ltd. 6 <sup>th</sup> Floor, Treasure Island, 11 Tukoganj Main Road Indore	Vs	ACIT 5(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AACCT 7457 R</b>		
Assessee by	Shri Manjeet Sachdeva & Avinash Gaur, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	05.04.2023	
Date of Pronouncement	10.04.2023	

**ORDER**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 11.08.2022 of Ld. Commissioner of Income Tax (Appeals) (in short Ld. CIT(A), National Faceless Appeal Centre, Delhi arising from the penalty order passed u/s 271(1)(c) of the Income Tax Act, 1961 (in short "the Act") for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

- 01. The order has been passed ex-parte without taking into consideration the submission made before CIT (A) manually.*
- 02. That the learned CIT (A) erred in passing the order when he was aware that the matter was first fixed for hearing on 10.10.2019, when the matters were heard manually.*

*03. That the learned CIT (A) should have applied his mind to the facts of the case and perused the records before deciding the matter, holding therein that no reply to be filed.*

*04. That the learned CIT (A) erred in confirming penalty of Rs.3400000/ under section 271(1)(c) of the Income Tax Act.*

*05. That the penalty levied is not based on the facts of the case and needs to be deleted.*

*06. That the assessee company craves leave to add, alter, amend and/or delete any of the grounds of appeal.*

2. The assessee is a Private Limited Company and engaged in the business of construction of commercial complex. The assessee filed its return of income for the year under consideration on 25.09.2012 declaring total income at NIL with current year loss of Rs.1,03,28,211/-. During the scrutiny assessment Ld. AO noticed that the assessee has debited in the Profit and Loss account the expenditure under the head Employees benefit expenses, depreciation, administrative and other expenses total amounting to Rs.1,03,54,633/-. Since there was no sale during the year under consideration, therefore, the Ld. AO was of the view that all the expenses must have been capitalized instead of showing as revenue expenditure. Ld. AO consequently, disallowed these expenses total amount to Rs.1,03,54,633/- and assessed the total income at Rs.26,420/- as against the loss of Rs.1,03,28,211/-. The Ld. AO initiated penalty proceedings u/s 271(1)(c) and levied the penalty in respect of this addition made by disallowing the expenses while passing the order dated 26.03.2018. The assessee challenged the order of the Ld. AO u/s 271(1)(c) before the Ld. CIT(A) but the Ld. CIT(A) has dismissed appeal OF by the assessee for want of any reply/details.

3. Before Tribunal the Ld. AR of the assessee has submitted that earlier there were physical hearing going on before the Ld. CIT(A) and the assessee appeared and filed the reply before the Ld. CIT(A). However, subsequently, due to change of hearing process from physical to Faceless the impugned order was passed by the Ld. CIT(A) in the Faceless proceedings without considering the reply filed by the assessee during the

physical hearing. Thus, the Ld. AR has submitted that the impugned order passed by the Id. CIT(A) without considering reply already filed by the assessee is against the principles of natural justice and liable to set aside. He have further submitted that the levy of penalty u/s 271(1)(c) of the Act is otherwise not sustainable as it is not a case of concealment of particulars of income or furnishing inaccurate particulars of income. The assessee has disclosed all the relevant facts in the return of income and the claim of expenditure is not found to be bogus or incorrect but Ld. AO has disallowed the claim of expenditure on the ground that there was no sale during the year under consideration and in the opinion of the Ld. AO entire expenditure should have been capitalized. The Id. AR has submitted that all the expenses are general in nature and have been incurred for the purpose of running and maintaining the business of assessee company. The expenses are recurring in nature and day to day expenses which are in revenue nature and therefore the assessee has rightly debited the same in the profit and loss account. None of the expenses are related to the project but these expenses are only recurring in nature being payment to employees on account of salaries and wages as well as staff welfare expenses, depreciation on the business assets and other administrative expenses incurred on account of rent, professional fee, repairs and maintenance etc. Therefore, the claim of the assessee was bonafide claim and cannot be held as assessee has committed any default of concealment of income or furnishing inaccurate particulars of income. In support of his contention he has relied upon the judgment of *Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158* and submitted that the disallowance of claim which is not allowable as per the provisions of law by itself will not amounting to furnishing of inaccurate particulars of income when the assessee has disclosed and furnished all the relevant facts and details. He has also relied upon the judgment of *Hon'ble Jurisdictional High Court in the case of CIT vs. Praveen B. Gada (HUF) (2011) 18 ITJ 65 (MP)*.

4. On the other hand, Ld. DR has submitted that in the quantum appeal Ld. CIT(A) has decided this issue against the assessee and therefore, addition made by the AO has attained finality as assessee has not filed further appeal. The assessee has made impermissible claim of expenses when there is no business activity of the assessee particularly no sale during the year under consideration. Therefore, the claim of the assessee was rightly disallowed by the AO as incorrect claim and consequently levied penalty u/s 271(1)(c) of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submission as well as relevant material on record. The Ld. AO has disallowed the claim of various expenses in para no.2 of the assessment order as under:

*2. Disallowance of Administrative and other expenses:-*

*During the course of assessment proceedings, on perusal of P&L account it is seen that the assessee has debited of total amount of Rs. 1,03,54,633/- under the head employee benefit exp., depreciation and administrative and other expenses. Further, the assessee has shown revenue from operation as Nil. It shows that there is no sale of stock in trade during the year under consideration. As per the accounting policy if there is no revenue operation from sale of stock in trade all expenses must be capitalized. But at the same time expenses related to employee benefit exp., depreciation and administrative and other expenses totaling of Rs. 1,03,54,633/- (727551+123176+9503906) shown as revenue expenditure was not capitalized.*

*Vide order sheet dated 09.03.2015 The Ld. Counsel was asked to show cause why the expenses of employee benefit exp., depreciation and administrative and other expenses should not be capitalized as per accounting standard and policy. The facts brought to the knowledge of Ld. Counsel.*

*Therefore, the Ld. Counsel of the assessee has not filed any written submission in respect of claim of expenses. Therefore, in absence of documentary evidences total expenditure of Rs.1,03,54,633/- which is not a revenue expenditure and must be treated as capital expenditure, and it is hereby being disallowed and added back to closing stock of the Assessee company.*

*Penalty proceedings u/s 271(1)(c) of the IT Act, 1961 is hereby being initiated separately for assessee furnishing inaccurate particulars of his income.*

6. Ld. AO has disallowed the claim of expenses under the head Employees benefit expenses, depreciation, administrative and other expenses. The Ld. AO disallowed these expenses by treating the same as capital in view of the fact that during the year under consideration there was no sale by the assessee. Ld. AO did not doubt the correctness of the expenditure incurred by the assessee under these heads. Therefore, the genuineness and correctness of the expenditure incurred by the assessee are not in dispute or doubted by the Ld. AO but the claim was disallowed only on the ground that during the year under consideration there was no sale and therefore, these expenses must be capitalized instead of showing as revenue expenditure. It is also not in dispute that the very nature of these expenses reveals that these are not falling under the capital field but all are revenue expenditure as these are all incurred for keeping the assessee company alive and going concern. It is also not the case of the department that the assessee has closed its business but it was only an isolated instance for the year under consideration, where there were no sales. When inherent nature of these expenses are revenue then the claim of the assessee is a *bona fide* claim and the assessing officer has disallowed said claim not on the ground of correctness or genuineness of the expenditure incurred by the assessee but due to no sale during the year under consideration. It is a simple case of difference of opinion as the assessee has claimed these expenses as allowable whereas the Ld. AO has opined that the expenses are not allowable for want of any sale during the year and held that all the expenditure ought to have been capitalized.

7. Hon'ble Supreme Court in case of *CIT vs. Reliance Petroproducts Pvt. Ltd. (supra)* while dealing with the issue of levy of penalty u/s 271(1)(c) of the Act against the disallowance of expenses held in para 8 to 10 as under:

8. Therefore, it is obvious that it must be shown that the conditions under [Section 271\(1\)\(c\)](#) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed 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. In *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under [Section 271\(1\)\(c\)](#), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of [Section 271\(1\)](#) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* was upset. In *Union of India Vs. Dharamendra Textile Processors* (cited supra), after quoting from [Section 271](#) extensively and also considering [Section 271\(1\)\(c\)](#), the Court came to the conclusion that since [Section 271\(1\)\(c\)](#) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of [Section 271\(1\)\(c\)](#) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under [Section 276-C](#) of the Act. The basic reason why decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra) was overruled by this Court in *Union of India Vs. Dharamendra Textile Processors* (cited supra), was that according to this Court the effect and difference between [Section 271\(1\)\(c\)](#) and [Section 276-C](#) of the Act was lost sight of in case of *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra). However, it must be pointed out that in *Union of India Vs. Dharamendra Textile Processors* (cited supra),

no fault was found with the reasoning in the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under [Section 271\(1\)\(c\)](#) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled.

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. 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\(1\)\(c\)](#) of the Act. A mere making 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 the inaccurate particulars.

10. It was tried to be suggested that [Section 14A](#) of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was 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, in our opinion, attract the penalty under [Section 271\(1\)\(c\)](#). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under [Section 271\(1\)\(c\)](#). That is clearly not the intendment of the Legislature.*

8. Thus, when particulars provided by the assessee in the return of income are found to be correct except the allowability of the claim due to the provisions of law then the same cannot lead to the conclusion that the assessee has furnished inaccurate particular of income or concealment of particulars of income inviting the penalty u/s 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. In the case in hand, the assessee has claimed the expenses by debiting in the profit and loss account but the Ld. AO did not accept the claim on the ground that due to no sale during the year expenses ought to have been capitalized would not *ipso facto* attract penalty u/s 271(1)(c) of the Act.

9. The Hon'ble Jurisdictional High Court in the case of *CIT vs. Praveen B. Gada (HUF)* (*supra*) has considered an identical issue in para 6 & 7 as under:

*6. Having heard learned counsel for the appellant, we find that in the absence of any in- dependent finding by the AO that the assessee either concealed his income or furnished inaccurate particulars, merely because the assessee treated it as a business loss, whereas the Revenue treated it as a capital loss, the provisions contained under s. 271(1)(e) of the Act would not attract. In the circumstances, we find no infirmity in the order passed by the Tribunal.*

*7. In our considered view, the finding recorded by the Tribunal that the assessee did not conceal his income nor furnish the inaccurate particulars, are wholly justified and needs no interference. Merely on the basis of finding recorded by the Tribunal in the original proceedings (quantum proceedings) in which it has been observed that the assessee has concealed certain facts, would not itself attract provisions of s. of the Act. In the ab- sence of any mens rea a finding about concealment of particulars of income or furnish- ing inaccurate particulars, in our considered view, could not have been arrived at.*

*Accordingly, no case for interference in the order passed by the Tribunal is made out As a result, the appeal fails and is hereby dismissed.*

10. Accordingly, in the facts and circumstances as discussed above as well as following judgment of Hon'ble Supreme Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd. (supra)* as well as judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Praveen B. Gada (HUF) (supra)*, the penalty levied by AO u/s 271(1)(c) of the Act by treating the expenditure as capital is not justified and the same is deleted.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 10.04.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 10.04.2023**

**Patel/Sr. PS**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*