

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 186 & 189/Mum/2023  
(Assessment Years: 2014-15 & 2016-17)

D C Polyester Limited S V Industrial Estate, Aarey Road Goregaon (E), Mumbai-400 063	Vs.	DCIT, Central Circle-6(4) Mumbai
PAN/GIR No. AAACD 3816 C		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Jitendra Jain
<b>Revenue by</b>	:	Smt. Mahita Nair
<b>Date of Hearing</b>	:	23.03.2023
<b>Date of Pronouncement</b>	:	21.06.2023

**ORDER**

**Per Kavitha Rajagopal, JM:**

The captioned appeals are filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) – 54, Mumbai ('Id.CIT(A) for short), Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2014-15 and 2016-17.

2. The solitary issue involved in these appeals are the levy of penalty amounting to Rs.3,67,090/- u/s. 271(1)(c) of the Act being tax sought to be evaded by furnishing inaccurate particulars of income. The assessee has also taken the ground that the A.O. has failed to specify whether the levy of penalty was for concealment of income or for furnishing of inaccurate particulars of income.

3. As the facts are identical, we hereby pass a consolidated order by taking ITA No. 186/Mum/2023 as the lead case.

**ITA No. 186/Mum/2023**

4. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and selling textile products and had filed return of income dated 30.03.2015, declaring total income at Rs.14,32,455/-. Pursuant to a search action carried out in the case of D'décor Group on 06.03.2018 in which the assessee was one of the group entities, notice u/s. 153A of the Act dated 26.09.2019 was issued on the assessee company. In response to the said notice, the assessee filed its return of income dated 19.10.2019, declaring the total income same as that of the returned income.

5. The Id. Assessing Officer (A.O. for short) passed the assessment order dated 30.12.2019 u/s. 143(3) r.w.s. 153A of the Act, determining the total income at Rs.26,20,455/-, where the A.O. treated the rental income of Rs.39,60,000/- under the head 'profits and gains from business or profession' instead of 'income from house property' and thereby made a disallowance of Rs.11,88,000/- u/s. 24(a) of the Act. The A.O. also initiated the penalty proceedings u/s. 271(1)(c) of the Act and levied the impugned penalty amounting to Rs.3,67,090/- for furnishing of inaccurate particulars of income.

6. The assessee was in appeal before the Id. CIT(A) challenging the penalty order, who confirmed the impugned penalty levied by the A.O.

7. The assessee is in appeal before us, challenging the impugned order.

8. It is observed that the assessee had offered 'income from house property' amounting to Rs.27,72,000/- and had claimed deduction of Rs.11,88,000/- u/s. 24(a) of the Act on the aggregate rental income of Rs.39,60,000/- during the assessment proceeding. The A.O. observed that the rental income was also considered in the P & L account as 'revenue from operations' for which the assessee is said to have claimed various expenses, thereby reducing the rent received while computing the income under the head 'profit or gains from business or profession' which was also considered for computation of income under the head 'income from house property'. The assessee has contended that the expenses claimed from business income are attributable to the business expenses and further contended that the rental income can be assessed as 'income from business income' which was offered in that manner by the assessee in the earlier years. The assessee relied on the decision of *CIT vs. Reliance Petro Products Pvt. Ltd.* [2010] 322 ITR 158 (SC) and the decision of the Hon'ble Bombay High Court in the case of *Taparia Tools Ltd. vs. Jt. CIT* (in Income Tax Reference No. 135 of 2000 (Bom)).

9. The Id. CIT(A) distinguished the above said decisions and held that the assessee has claimed deduction and expenses for the same rental income under two different heads of income which was identified by the A.O. during the scrutiny proceeding. The Id. CIT(A) upheld the penalty order levied by the A.O. for furnishing of inaccurate particulars of income.

10. The learned Authorised Representative (Id. AR for short) for the assessee contended that the A.O. has failed to specify how the assessee has or in what manner the assessee has furnished the inaccurate particulars of income when the entire income was

offered to tax by the assessee. The ld. AR further contended that the A.O. has failed to specify the limb on which penalty was levied u/s. 271(1)(c) of the Act and stated that the penalty order is invalid on this ground.

11. The learned Departmental Representative (ld. DR for short) for the Revenue, on the other hand, controverted the said fact and relied on the decision of the lower authorities.

12. We have heard the rival submissions and perused the materials available on record. The assessee is said to have owned factory premises at Boisar, where the assessee was doing manufacturing activities and since the assessee's business was deteriorating, the said premises was let out to M/s. D'décor Export Private Limited for the purpose of generating revenue from the said property. The assessee has offered this rental income as 'business income' and the same is said to have been accepted by the Department. The rental income of Rs.39,60,000/- earned during the impugned year was offered under the head 'income from house property' for which the assessee had claimed deduction amounting to Rs.11,88,000/- u/s. 24(a) of the Act and had offered the remaining Rs.27,72,000/- for tax. The assessee further contended that it had not furnished any inaccurate particulars of income as the same was duly accounted in the books of accounts and declared in the return of income of the assessee. The A.O. held that the assessee's contention was not acceptable as the assessee was required to maintain consistency in taxing a particular type of income under the same head in all the years and cannot change its stand.

13. From the above observation, it is pertinent to point out that the A.O. has disallowed the deduction of Rs.11,88,000/- claimed u/s. 24(a) of the Act for the reason that the gross rental income is to be taxed under the head 'income from business'. We find no justification in the A.O.'s action in levying penalty on the said facts as there is no evidence of inaccurate particulars furnished by the assessee. We also find from the assessment order that no incriminating material pertaining to the assessee was unearthed. The assessment order is also silent about the business expenses which are alleged to be claimed by the assessee. There is also no specification in the assessment order as to the nature of the expenses claimed by the assessee. The assessee has also raised a ground that the A.O. has not mentioned the specific charge for which the penalty was levied and on perusal of the assessment order, it is evident that the A.O. has initiated the penalty proceeding for "furnishing inaccurate particulars of income leading to concealment of income". We are of the considered view that the assessee has not furnished any inaccurate particulars of income nor has it concealed any income chargeable to tax. Even otherwise the A.O.'s failure in not specifying the actual limb u/s. 271(1)(c) of the Act makes the penalty order invalid in the eyes of the law. In the absence of any conscious concealment of income by the assessee, we hereby allow the grounds raised by the assessee.

**ITA No. 189/Mum/2023**

14. As the facts in ITA No. 189/Mum/2023 are identical with that of the facts in ITA No. 186/Mum/2023, the observations given above applies *mutatis mutandis* to this appeal also.

15. In the result, both the appeals filed by the assessee are allowed.

*Order pronounced in the open court on 21.06.2023*

Sd/-

Sd/-

(B R Baskaran)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 21.06.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai