

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 187/Mum/2023 (A.Y.2015-16)**

**D. C. Polyester Limited**

S. V. Industrial Estate, Aarey Road,  
Goregaon (East),  
Mumbai-400 063

**PAN: AAACD3816C**

..... Appellant

Vs.

**DCIT CC – 6(4),**

R. No. 1925, 19<sup>th</sup> floor,  
Air India Building,  
Nariman Point  
Mumbai-400 021

..... Respondent

Appellant by : Shri Ravikant Pathak, Ld. AR  
Respondent by : Smt. Mahita Nair, Ld. CIT-DR

Date of hearing : 15/06/2023  
Date of pronouncement : 25/08/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of Ld. CIT (A)- 54, Mumbai dated 24.11.2022 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

*1. The Hon'ble Commissioner of Income Tax (Appeal)-54, Mumbai [hereinafter referred as CIT(A)] erred in confirming the penalty of Rs. 6,55,180/- levied under section 271(1)(c) of the Income Tax Act, 1961 (Act) being 100% of tax sought to be evaded by allegedly furnishing inaccurate particulars of income.*

*The Appellant, on the facts and circumstances of the case, submits that it has not furnished any inaccurate particulars of income; hence, the penalty levied by the AO and confirmed by the CIT (A) shall be deleted.*

*2. The AO has erred in levying the penalty and CIT(A) has erred in confirming the same without mentioning the specific charge against the Appellant as to whether it has concealed the income or furnished inaccurate particulars of income.*

*The Appellant craves leave to add, amend and modify above grounds of appeal.*

2. The brief facts of the case are that assessee is a company filed its return of income u/s. 139 of the Act on 27.11.2015 declaring total income of Rs. 16,10,320/-. Subsequently, a search action u/s. 132 of the Act was carried out on D' Décor Group including assessee company. A notice u/s. 153A of the Act was issued in the case of assessee and in response to the same, assessee filed a return u/s. 153A of the Act on 19.10.2019 declaring same figure of income at Rs. 16,10,320/-. Notice u/s. 142(1) and 143(2) of the Act was issued and additions of Rs. 11, 88,000/- under the head Income from House Property being disallowance made u/s. 24(a) of the Act and Rs. 9, 32,326/- under the head Income under the head Business or Profession, being written off of Fixed Assets were made to the total income declared by the assessee.

3. Simultaneously, penalty proceedings u/s. 271(1)(c) of the Act was also initiated and as the assessee has not challenged the assessment order on merits

and quantum, a minimum penalty @ 100% of the amount of tax sought to be evaded was levied vide order Dated: 27.07.2021. Assessee being aggrieved with this order of penalty passed u/s. 271(1) (c) of the Act, preferred an appeal before the Ld. CIT (A), who in turn confirmed the order passed by the Assessing Officer. Assessee being further aggrieved preferred this appeal before us.

4. We have gone through the order of AO (Assessment Order and Penalty Order), Order of Ld. CIT (A) and submissions of the Assessee alongwith case laws relied upon. We observed that cause of addition under the head Income from House Property was different treatment given by the assessee in this year vis-à-vis previous year. In previous year assessee had shown the same under the head Business or Profession, but in this year shown under the head Income from House Property, **which is actually correct as per established legal position for income from house property.** But rather AO changed the same to income under the head Business or Profession and assessee also agreed and this difference came resulting into addition. What we perceive out of this action of AO, is to enhance the income of the assessee by any mean may be by way of giving wrong treatment to a head of income, i.e., from the head Income from House Property to the head income under the head Business or Profession. Assessee given a wrong treatment last year does not mean that as a matter of consistency or any other principle this year also assessee/AO are supposed to give a wrong treatment to the same. Selection of the head is not an option but a mandate of law to be compulsorily followed by all the concerned. It is also settled position of law that proceedings of penalty always emanate from assessment proceedings but both are separate in nature and have their own specific facts and law

applicable. **Based on this discussion, we don't find any merit in the case of department by levying the penalty on this disallowance of Rs. 11,88,000/- being disallowance made u/s. 24(a) of the Act. On this count, i.e., disallowance made under the head Income from House Property, we hold that there are no inaccurate particulars furnished by the assessee, although disallowance was not challenged by assessee on merits and quantum. Hence, penalty on this disallowance is not sustainable.**

5. As far as second disallowance of Rs. 9, 32,326/- being fixed assets written off and claimed under the head income under the head Business or Profession is concerned, it is noted that assessee was liable to Tax Audit u/s. 44AB of the Act and also under the Companies Act, 2013. Such type of accounting treatment and further claim under the Income Tax Act are subject to verification of Statutory/Tax Auditor. Assessee may claim certain things inadvertently, but where the process of audit is involved, auditor is supposing to point out such apparent mistakes through qualification in audit report or through Tax Audit Report in form no. 3CD. **Based on this discussion, we don't find any merit in the case of department by levying the penalty on this disallowance of Rs. 9,32,326/- being disallowance made on written off of Fixed Assets. On this count, i.e., disallowance made under the head Income from Business or Profession, we hold that there are no case made out by the department, justifies levy of penalty. Although disallowance, was not challenged by assessee on merits and quantum. Hence, penalty on this disallowance is also not sustainable.**

6. In addition to the above findings, we further rely on the judgment of CIT vs. Reliance Petro Products 322 ITR 158 (SC) and Price Water House Coopers Pvt. Ltd.

vs. CIT 348 ITR 306 (SC). Wherein it was held by Hon'ble Supreme Court that mere disallowances made by the AO do not call for levy of penalty under this provision because there is no conclusive evidence of concealment. Moreover as discussed above, the case of the assessee does not fall in the category where allegation of 'furnishing inaccurate particulars of income' can be called for. Hence as the basic condition of establishing the allegation leveled against assessee is not fulfilled and in the given preposition, the judicial pronouncements mentioned (supra) is in favour of assessee.

6. In view of above appeal of the assessee is allowed and AO is directed to delete the penalty imposed.

**7. In the result, Appeal of the assessee is allowed.**

Order pronounced in the open court on 25<sup>th</sup> day of August, 2023.

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 25/08/2023

*Sr. PS (Dhananjay)*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)

**ITAT, Mumbai**