

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.155/Jab/2018
(ASSESSMENT YEAR- 2006- 2007)**

M/s. J.P.Tobacco Products Pvt. Ltd., Patharia Phatak, Damoh (M.P.).	vs	ACIT, Circle-Sagar.
(Appellant)		(Respondent)
PAN No. AAACJ7141G		

Assessee By	Shri G.N.Purohit, Sr.Adv. & Shri Abhijeet Shrivastava, Adv.
Revenue By	Shri Rajesh Kumar Gupta, Sr.DR
Date of hearing	15/09/2023
Date of Pronouncement	22/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

This appeal by the assessee is directed against order dated 04.05.2018 passed by Ld. Commissioner of Income Tax(Appeals)-1, Jabalpur [in short “Ld.CIT(A)”] for assessment year 2006-07, in relation to penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short “the Act”) levied by Assessing Officer (in short “AO”), for furnishing inaccurate particulars of the income. The assessee has raised following grounds of appeal:-

- 1) *“That on facts and in the circumstances of the case the learned AO erred in holding that inaccurate particulars of income have been furnished.*
- (2) *That the learned AO erred in disallowed the claim on the ground that the news of death of a Director was of personal nature i.e obituary of a related person to the company which does not serve any business purpose. Thus he overlooked that the information published was in respect of death of a Director which has direct bearing on the business of a company.*
- (3) *That assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves we not found to be inaccurate nor could be viewed as the concealment of income on its parts. 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, 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 the AO for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intention of the Legislature.*
- (4) *That on the facts and in the circumstances of the case the levy of penalty is perverse unjustified and uncalled for.”*

2. Briefly stated facts of the case are that the assessment u/s 143(3) of the Act was completed on 13.12.2008, assessed total income at Rs.30,02,25,000/-. During the course of assessment proceedings, the AO observed that the assessee had deposited an amount of Rs.7,38,400/- under the head “advertisement of personal nature” i.e. obituary of related person to the company. According to the AO, this advertisement was not having any business purpose and therefore, he disallowed the same u/s 37 of the Act and added to the total income of the assessee. On further appeal, Ld.CIT(A) also upheld the disallowance holding that the predominant purpose was to pay tribute to the departed soul and not to advertise products of the assessee. On further appeal, the Tribunal also accepted the view taken by Ld.CIT(A) and upheld the disallowance. In view of the disallowance upheld by the Tribunal, the AO issued show cause notice for levy of penalty. The submission filed by the assessee were not found satisfactory therefore, he levied penalty by way of order u/s 271(1)(c) of the Act dated 28.06.2010 amounting to Rs.2,72,850/- for furnishing inaccurate particulars of income. On further appeal, Ld.CIT(A) upheld the penalty observing as under:-

7.1.3.DECISION:-*“I have carefully considered the submission put forth including the case laws relied upon & the documents*

furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned penalty order & relevant assessment order and other material evidences brought on record and these grounds of appeal relating to the imposition of penalty of Rs. 2,72,850/- under section 271(1)(c) of the Act are decided as under:-

- (i) The assessee has spent a sum of Rs. 7,38,400/- on publication of advertisement of obituary, of director of the assessee company. This expense was in the nature of personal expense hence the AO disallowed this payment and this disallowance was confirmed by the appellate authorities. The AO imposed the penalty of Rs. 2,72,850/- in respect of this disallowance holding that the assessee has furnished inaccurate particulars of its income. The ld AR in his submission has relied on various decisions however the factual position of these cases differ from the case of the assessee, hence the ratio laid in these cases is not applicable to the case of the assessee.*
- (ii) It is an established principle of Income Tax Act that only the expenses relating to the business are allowable expense. The assessee has claimed non business expense of Rs. 7,38,400/- in its profit and loss account, this is contrary to provisions of Income Tax Act. For this reason, I am of the view that the AO was fully justified in imposing penalty of Rs. 2,72,850/- for furnishing of inaccurate particulars of income.*
- (iii) In result, these grounds of appeal are decided against the assessee.”*

3. Before us, Ld. Counsel for the assessee submitted that paper publication of the obituary also contained name of the company and it was not a mere intimation of the death of the Director. The publication was for information to the traders i.e. those who supply raw material and workers as well as the stockists, dealers and consumers connected with the business of the assessee. Large number of condolence messages were received from the persons connected with the business on account of publication of the message. According to him, the AO did not find any inaccurate particulars in the intimation of the death from the details of the expenses furnished by the assessee. Ld. Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of ***CIT vs Reliance Petro Products Pvt.Ltd. [2010] 322 ITR 158 (SC)*** and submitted that every inaccurate claim for expenditure would not amount to giving inaccurate particulars of such income.

4. On the contrary, Ld. Departmental Representative (DR) on behalf of the Revenue relied on the decision of the Hon'ble Delhi High Court in the case of ***CIT vs Zoom Communication P.Ltd. in ITA 07/2010 dated 24.05.2010*** wherein the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt.Ltd.(supra) had been distinguished and held *that it is true that*

mere submitting the claim which is incorrect in law, would not amount for giving inaccurate particulars of the income of the assessee but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, the explanation (1) of section 271(1) of the Act would come into play and work to disadvantage of the assessee.

5. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the relevant material available on record. It is not disputed that the assessee has claimed expenditure of Rs.7,38,400/- on the obituary published on the death of the Director which has been disallowed by the AO and said disallowance has been sustained by Ld.CIT(A) as well as by the Tribunal. The assessee has not brought on record any decision which supports the claim of the assessee and therefore, two views are not possible on the issue of the disallowance. Hon'ble Delhi High Court in the case of Zoom Communications Pvt. Ltd. (supra) has duly considered the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt.Ltd. (supra) and thereafter, held as under:-

12. "Relying upon the decision of Supreme Court in Commissioner of Income Tax vs. Reliance Petro Products Pvt.

Ltd.: (2010) 322 ITR 158 (SC), it was contended by the learned counsel for the respondent that since the factual information in respect of the amounts wrongly included in Schedule 9 of Profit & Loss Account was disclosed by the assessee, this was not a case where penalty could be imposed under Section 271(1)(c) of the Act. In the case before the Supreme Court, the assessee had claimed interest under Section 36(1)(iii) of the Act. The interest was paid on the loan which the assessee had utilized for purchasing some IPL shares by way of its business policies. However, the assessee did not earn any income by way of dividend from those shares. It was submitted before the Supreme Court that the assessee company was an investment company and that in its own case for the Assessment Year 2000-01 the Commissioner (Appeals) had deleted the disallowance of interest made by the Assessment Officer and the Tribunal had also confirmed the stand of the Commissioner (Appeals) for that year and it was on the basis of this that the expenditure was claimed. The Income Tax Appellate Tribunal had, however, restored the issue back to the Assessing Officer. In the appeal arising out of penalty proceedings, the Tribunal, in these circumstances, was of the view that the confirmation of disallowance by the Tribunal did not mean that the assessee had concealed the income or had filed inaccurate particulars thereof. Noticing that the assessee had given an explanation vide its letter dated March 22, 2006 giving reasons for claiming the interest as a deduction, the Tribunal was of the view that the onus shifted on the revenue to prove that the explanation offered by the assessee was false. The Tribunal felt that the bona fides of the explanation were clearly proved from the fact

that the High Court admitted the appeal of the assessee about the disallowance of the interest. The Tribunal held that if there could be two views about the claims of the assessee, the explanation offered by it cannot be said to be false. The penalty was accordingly deleted by the Tribunal. The order of the Tribunal was maintained by the High Court. It was contended on behalf of the Revenue, before the Supreme Court, that only the amount of interest paid in respect of capital borrowed for the purposes of the business or profession could have been claimed under Section 36(1)(iii) of the Act and the case before the Court was not in respect of the capital borrowed by the assessee. It was further pointed out that under Section 14A of the Act, no deduction could be allowed in respect of the expenditure incurred by the assessee in relation to income which did not form part of the total income under this Act. The attention of the Court was also drawn to Section 10(33) to show that the income arising from the transfer of a capital asset could not be reckoned as an income which formed part of the total income. The contention thus was that the claim made by the assessee was unacceptable in law.

13. The Supreme Court was of the view that under [Section 271\(1\)\(c\)](#), there has to be concealment of income of the assessee or he must have furnished inaccurate particulars of his income. The contention of the Revenue that it was a case of furnishing of inaccurate by making incorrect claim for the expenditure on interest was rejected noticing that the words "particulars" used in [Section 271\(1\)\(c\)](#) would embrace the meaning of the details of the claim made by the assessee and that the assessee before

the Court had not given any such information which was found to be incorrect or inaccurate. No statement or details supplied by the assessee had been found to be factually incorrect. The Court rejected the contention that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. The Court was of the view that by any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars.

14. After considering the meaning of "inaccurate" given in Webster's Dictionary, the Court was of the view that inaccurate particulars would mean the details supplied in the return which are not accurate, not exact or correct, not according to truth, or erroneous. It was held that making a claim which is not sustainable in law, cannot, by itself, amount to giving inaccurate particulars.

15. It was contended before the Supreme Court that since the assessee had claimed deduction knowing that they were incorrect, it amounted to concealment of income since 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 claimed or an exaggerated amount could be claimed and since attempts of both the types reduces taxable income, both amount to concealment of particulars of one's income as well as to furnishing of inaccurate particulars of income. The contention was rejected by the Court.

16. *The proposition of law which emerges from this case, when considered in the backdrop of the facts of the case before the Court, is that so long as the assessee has not concealed any material fact or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty under [Section 271\(1\)\(c\)](#) of the Act, even if the claim made by him is unsustainable in law, provided that he either substantiates the explanation offered by him or the explanation, even if not substantiated, is found to be bonafide. If the explanation is neither substantiated nor shown to be bonafide, Explanation 1 to [Section 271\(1\)\(c\)](#) would come in to play and the assessee will be liable to for the prescribed penalty.*

17. *The assessee before us is a company which declared an income of Rs.1,21,49,861/- and accounts of which are mandatorily subjected to audit. It is not the case of the assessee that it was advised that the amount of income tax paid by it could be claimed as a Revenue Expenditure. It is also not the case of the assessee that deduction of income tax paid by it was a debatable issue. In fact, in view of the specific provisions contained in [Section 40\(ii\)](#) of the Act, no such advice could be given by an Auditor or other Tax Expert. No such advice has been claimed by the assessee even with respect to the amount claimed as deduction on account of certain equipment having become useless and having been written off. As noticed earlier, the Tribunal was entirely wrong in saying that [Section 32\(1\)\(iii\)](#) of the Act applies to such a deduction. It was not the contention before us that claiming of such a deduction under [Section 32\(1\)\(iii\)](#) was a debatable issue on*

which there were two opinions prevailing at the relevant time. In fact, the assessee did not claim, either before the Assessing Officer or before the Commissioner of Income Tax(Appeals) that such a deduction was permissible under [Section 32\(1\)\(iii\)](#) of the Act. No such contention on behalf of the assessee finds noted in the order of the Tribunal. Thus it was the Tribunal which took the view that [Section 32\(1\)\(iii\)](#) could be attracted to the deduction claimed by the assessee. It is also not the case of the assessee that it was under a bonafide belief that these two amounts could be claimed as Revenue Expenditure. The assessee, in fact, outrightly conceded before the Assessing Officer that these amounts could not have been claimed as revenue deductions. The only plea taken by the assessee before the Income Tax Authorities was that it was due to oversight that the amount of income tax paid by the assessee as well as the amount claimed as deduction on account of certain equipment being written off could not be added back in the computation of income.

18. In the case of Reliance Petro Products Private Limited(supra), the addition made by the Assessing Officer in respect of the interest claimed as a deduction under [Section 36\(1\)\(iii\)](#) of the Act was deleted by the Commissioner of Income Tax(Appeals) though it was later restored, by the Tribunal, to the Assessing Officer. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances, that the Tribunal came to the conclusion that the assessee had neither concealed the income nor filed inaccurate particulars thereof. In recording this finding,

the Tribunal felt that if two views of the claim of the assessee were possible, the explanation offered by it could not be said to be false. This, however, is not the factual position in the case before us. The facts of the present case thus are clearly distinguishable.

19. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation 1 to [Section 271\(1\)](#) would come into play and work to the disadvantage of the assessee.

20. The Court cannot overlook the fact that only a small percentage of the Income Tax Returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bonafide, it would be difficult to say that he would still not be liable to penalty under [Section 271\(1\)\(c\)](#) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bonafide while making a claim of this nature, that would give a licence to unscrupulous assesseees to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self Assessment under [Section](#)

143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a malafide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have.

21. We find that the assessee before us did not explain either to the Income Tax Authorities or to the Income Tax Appellate Tribunal as to in what circumstances and on account of whose mistake, the amounts claimed as deductions in this case were not added, while computing the income of the assessee company. We cannot lose sight of the fact that the assessee is a company which must be having professional assistance in computation of its income, and its accounts are compulsorily subjected to audit. In the absence of any details from the assessee, we fail to appreciate how such deductions could have been left out while computing the income of the assessee company and how it could also have escaped the attention of the auditors of the company.

22. The explanation offered by the assessee company was not accepted either by the Assessing Officer or by the Commissioner of Income Tax(Appeals). The view of Income Tax Appellate Tribunal regarding admissibility of the deduction on account of written off of certain assets, under Section 32(1)(iii) of the Act is wholly erroneous. The Tribunal has not recorded a finding that

the explanation furnished by the assessee in respect of the deduction due to certain assets being written off was a bonafide explanation. The Tribunal has nowhere held that it was due to oversight that the amount of this deduction could not be added while computing the income of the assessee company.

23. As regards deduction on account of income tax paid by the assessee, the Tribunal felt that since no person would claim the same as deduction, to evade payment of tax, the claim made by the assessee was not malafide. In the absence of the assessee company telling the Assessing Officer as to who committed the oversight resulting in failure to add this amount while computing the income of the assessee, under what circumstances the oversight occurred and why it was not detected by those who checked the Income Tax Return before it was filed and later by the auditors of the assessee company, we cannot accept the general view taken by the Tribunal. In our view, no such view could have reasonably been taken, on the facts and circumstances prevailing in this case and, therefore, the decision of the Tribunal in this regard suffers from the vice of perversity. We cannot accept the general proposition that no person would ever claim the amount of income tax as a deduction with a view to avoid payment of tax. No hard and fast rule in this regard can be laid down and every case will have to be decided considering the facts and circumstances in which such a deduction is claimed, coupled with as to whether the explanation offered by the assessee for making the claim, is shown to be bonafide or not.”

6. The facts of the instant case being identical to the facts in the case of CIT vs Zoom Communication Pvt.Ltd. (supra) and therefore, following the above decision, we uphold that finding of Ld.CIT(A) on the issue in dispute. The Grounds raised by the assessee are accordingly, dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22/09/2023.

Sd/-

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

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3. The CIT
4. The CIT(A)
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Asstt. Registrar
Jabalpur Bench