

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5549/Del/2019
Asstt. Year: 2015-16

Vivaan Infotel Pvt. Ltd. 5/30, GF, Saraswati Marg, WEA, Karol Bagh, New Delhi – 110 005 PAN AAECV4778K (Appellant)	Vs.	ITO Ward- 26(4) New Delhi. (Respondent)
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Assessee by:	None
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	30.10.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 29.04.2019 of the Ld. Commissioner of Income Tax (Appeals)-9 New Delhi (**"CIT(A)"**) whereby he confirmed the penalty of Rs. 6,67,421/- levied by the Ld. Assessing Officer (**"AO"**) under section 271(1)(c) of the Income Tax Act, 1961 (**the "Act"**) for filing inaccurate particulars of income pertaining to Assessment year (**"AY"**) 2015-16.

2. The assessee has taken the following grounds of appeal:-

- “1. That on facts and in law the CIT (A) has erred in upholding levy of penalty of Rs 6,67,421/- imposed by AO u/s 271(1)(c) of the Act.

2. *That on facts and in law the CIT (A) has erred in upholding levy of penalty on addition of Rs 21,59,940/- made by the AO in order of assessment dated 08th December 2017 passed u/s 143(3) of the Act*
3. *That on facts and in law, the AO/CIT(A) have erred in holding / upholding that appellant has furnished inaccurate particulars of his income*
- 3.1 *That on facts and in law the CIT (A) has erred in invoking provisions of Explanation 1 to Section 271 of the Income Tax Act, 1961.*
- 3.2 *That on facts and in law the CIT(A) has erred in holding that this is not a case where the appellant had furnished all accurate particulars and acted bonafide.”*
4. *That on facts and in law orders passed by AO and CIT(A) are bad in law and void ab initio.”*

3. Briefly stated, the facts are that the assessee company is engaged in the business of mobile and its accessories. It filed its e-return for AY 2015-16 on 26.09.2015 declaring income of Rs. 2,86,740/-. Revised return was also filed on 06.01.2016 declaring income of Rs. 1,17,740/-. The case was taken up in scrutiny through CASS. During assessment proceedings the Ld. AO found that the assessee had made purchases from 8 parties. In order to verify the purchase he issued summons to them. Summons of 7 out of 8 parties were received back as undelivered. The Ld. AO required the assessee to produce the parties for examination which was not done. The Ld. AO received information from VAT Department that the assessee had made bogus purchases from 4 parties during the year and had detected excess cash of Rs. 17,138/- and excess stock of Rs. 3,78,763/-. It was also found that VAT Department calculated sale/turn over for the 2nd quarter of the year at Rs. 1,91,40,316/- against disclosed sale of Rs. 24,19,452/- and charged tax of Rs. 8,46,791/-. The Ld. AO confronted the assessee and rejected the books of accounts in view of provision of section 145(3) of the Act. He applied net profit rate of 5% on declared sales of Rs. 4,55,53,544/- which worked out to Rs. 22,77,677/-. Reducing therefrom net profit declared by the assessee at Rs. 1,17,737/- the Ld. AO made an addition of

Rs. 21,59,940/- (Rs. 22,77,677 – Rs. 1,17,737/-) to the income of the assessee in his order dated 8.12.2017 under section 143(3) of the Act. The addition was agreed to by the assessee. The Ld. AO initiated penalty proceedings under section 217(1)(c) of the Act for fling inaccurate particulars of income and imposed penalty of Rs. 6,67,421/- being 100% of the tax sought to be evaded vide order dated 21.06.2018 under section 271(1)(c) of the Act.

4. The assessee did not succeed before the Ld. CIT(A) who dismissed its appeal by observing and recording the following findings:-

“5.1 I have considered the facts of the ground and contention of the AR of the appellant. It is noted that assessment in this case was completed u/s 143(3) of IT Act, 1961 on 08.12.2017 at an income of Rs.2277680/- and the books of accounts were rejected on the account of infirmities and inaccurate particulars.

5.2 Contra, the AR of the appellant submits that it had submitted complete stock register along with purchase and sales register product wise and quantity wise details of goods traded. The appellant further states that the books of accounts were duly audited u/s 44AB of the IT Act, 1961 and under company law by a chartered accountant.

5.3 It is not the case where the appellant had furnished all accurate particulars and acted bonafide rather all the documents were before the AO, which were examined for specific finding. It is not the case of interpretation of any provision of the Act which may have more than one interpretation/ meaning being culled out of those submissions. Rather, the conclusion has been made on account of verification and examination of those documents. Further, It is noted that the addition so made was not on adhoc basis but rather estimate basis u/s 145(3) of the IT Act and which was accepted by the appellant as well. Further the judgment of the AO also finds support from the finding of the VAT department that the purchases were made from the non- verifiable dealers. The appellant had also paid taxes alongwith penalty determined by the VAT department. Many of the purchases shown by the appellant were found to be unverifiable as established by the VAT department. Therefore, the AR contention in this regard, is dismissed.

5.4 The appellant's reliance on various case laws are not found to be applicable in as much as they are distinguishable and does not pertain to the c circumstances in this case,

5.5 I do not find any merit in the pleas raised by the appellant. The appellant has contended that the additions are wrong, since it has already submitted the explanations and is getting the accounts duly audited as prescribed u/s 44AB. However, it is significant to state, without getting into the quantum proceedings and the documents provided therein, basis the inability of the appellant to provide suitable explanations and documents, so as to justify its stand. The amount of addition, is actually the inability of the appellant to provide suitable explanations and details to the AO. Hence, the contention of the appellant is rejected.

5.6 The provisions of S. 271(1)(c) of the IT Act makes it apply clear that when there is concealment of income or furnishing of inaccurate particulars, there needs to be a penalty under this provisions. In the present case, the failure of the appellant, to provide a valid explanation to the query so raised by the AR and genuineness of the purchases so made makes it a case, fit to be called as concealment of income, thereby making it eligible for the levy of penalty under Sec 271(1)(c).

5.7 The Hon'ble Supreme Court in the case of Union of India and other Vs Dharmendra Textiles Processors and others 306 ITR 277 has held that the 'mens rea' need not be established before imposition of penalty u/s 271(1) of the IT Act, 1961.

"The explanation appended to section 271(1)D of the Income-tax Act, 1961, indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The object behind the enactment of section 271(1)(c) read with the Explanation indicates that the section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C.

While imposition penalty u/s 271(1) of the LJ Act, 1961, it is of utmost importance to take into cognizance the objective of penalty provision. The price objective of penalty provision is to have deterrent effect, to make assessee law abiding and to enforce fiscal discipline amongst the assessee. An assessee who is acting against the settled principle of law, who is trying to defraud the revenue by circumventing the provisions of law deserves to be made to pay an additional amount through penalty. In the assessee's case all these ingredients are there and therefore, the penalty u/s 271(1) of the IT Act, 1961 is very much attracted

5.8 in a recent case of CIT vs. Atul Mohan Bindal 317 ITR 1 (SC), the Apex Court affirmed its decision in the case of Union of India Vs. Dharmendra Textile Processors (supra) and held that the penalty leviable u/s 271(1)(c) was neither criminal nor quasi criminal in nature.

It was a civil liability and therefore, presence of mens rea was not essential.

5.9 Reference can be made to the case of CIT vs. Escorts Finance Ltd. 226 CTR 105 (Del) Where the jurisdictional High Court hold that,

"Even if there is no concealment of income or furnishing of inaccurate particulars, but on the basis thereof the claim which is made is ex facie bogus, it may still attract penalty provisions. Cases of bogus hundi loans or bogus sales or purchases have been treated as that of concealment or inaccuracy in particulars of income for the judicial pronouncements (See Krishna Vs. CIT 217 ITR 645, Rajram Vs. CIT 193 ITR 614 and Beena Metals 240 ITR 222)."

5.10 The Hon'ble Supreme Court in the case of Chairman SEBI VS. Shri Ram Mutual Fund reported in (2006) 68 SCL 216 (SC), in para 35 have held as under:-

"Para 35..... In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act sand the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach civil oblitation which attracts penalty in the nature of fine under the provisions of the Act and the violations would immediately attract the levy of penalty irrespective of the fact whether contravention must make by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not ON a careful perusal of section 15(D)(b) and section 15E of the Act, there is nothing which required that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow"

5.11 In the facts & circumstances, I am of the considered view that the appellant company has failed to substantiate its claim as required under explanation 1 to section 271(1) (c) of the Act, and therefore, penalty of Rs. 6,67, 421/- so levied by the AO is confirmed. Appellant fails in these grounds of appeal."

5. This has brought the assessee before the Tribunal and all the grounds relate thereto.

6. Hearing of assessee's appeal was fixed for 24.08.2022, 25.01.2023, 13.04.2023, 15.6.2023 and finally on 29.08.2023. On none of the above

dates, the Authorised Representative of the assessee attended the hearing though Sr. DR was present on all the dates. We, therefore proceeded to decide the appeal ex-parte after hearing the Ld. Sr. DR.

7. The Ld. Sr. DR submitted that in the case of the assessee the Ld. AO found that the assessee had made purchases worth Rs. 2,78,10,578/- from six parties which were bogus. He pointed out number of defects in maintenance of books of account and rejected the same under section 145(3) of the Act being not satisfied with its correctness and completeness. The Ld. AO therefore applied net profit rate of 5% as against 3.65% declared by the assessee which resulted in addition of Rs. 21,59,940/- to the income of the assessee. The Ld. Sr. DR justified the levy of penalty which has been sustained by the Ld. CIT(A).

8. We have considered the submissions of the Ld. Sr. DR and perused the record. It is not in dispute that the assessee made purchases from unregistered dealers which were not verifiable. The Ld. AO rejected the books of account on the basis of numerous defects pointed out by him and made addition to the income of the assessee which has been accepted by the assessee and has not been challenged. On going through the order of the Ld. CIT(A) and his findings extracted above, we find that he has recorded cogent reasons duly backed by the judicial precedent in holding that the assessee failed to substantiate its claim as required under Explanation 1 to section 271(1)(c) of the Act. We, therefore, uphold his order and reject the appeal of the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 30th October, 2023.

sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Dated: 30/10/2023

Veena

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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