

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.724/PUN/2023
निर्धारण वर्ष / Assessment Year : 2016-17

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| Niwas Spinning Mills Ltd., C/o. Vijay Ramniwas Jaju, 406- A, West Mangalwar Peth, Chati Galli, Solapur – 413002. PAN: AAACN6350 P | V s | The ACIT, Circle-1, Solapur. |
| Appellant / Assessee | | Respondent / Revenue |

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| Assessee by | Shri Girish Ladda – AR |
| Revenue by | Shri Ramnath P Murkude – DR |
| Date of hearing | 29/08/2023 |
| Date of pronouncement | 30/10/2023 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of ld.CIT(A)[NFAC] for A.Y.2016-17 emanating from order under section 271(1)(c) of the Act dated 26.06.2019. In this case, the Assessing Officer(AO) has levied the penalty of Rs.12,45,533/- on account of filing of inaccurate particulars. In the assessment order passed under section 143(3) of the Act, the AO invoked

provisions of section 41(1) of the Act and made addition of Rs.59,69,471/-.

2. The assessee had filed Return of Income showing Nil Income. During the assessment proceedings, the assessee was asked to file details regarding brought forward creditors of Rs.48,62,934/-. The assessee filed confirmation from these creditors. However, the assessee was not having cordial relations with them and hence unable to produce them. Therefore, assessee surrendered the amount. The AO made addition under section 41(1) of the Act. AO initiated penalty under section 271(1)(c) of the Act for furnishing inaccurate particulars vide order dated 26.06.2019. Aggrieved by the same, assessee filed appeal before this Tribunal.

Submission of ld.AR :

3. The submission of the ld.AR is reproduce here as under:

“1) The appeal is against the order of the CIT(A) confirming the Penalty u/s 271(1)(C) levied by the Ld. AO on the deeming additions Rs.59,69,471 u/s 41(1) the of IT Act. The addition was made as assessee failed to produce the creditors before the AO.

- 2) *The Assessee had filed confirmation letters of the creditors as asked by the AO (noted in 2.1 of the Penalty order and also in Para 7.1 of assessment order).*
- 3) *That all facts were disclosed in the balance sheet and in the return of income. Section 41(1) is a deeming provision and hence penalty u/s 271(1)(C) not applicable on deeming additions.*
- 4) *None of the creditors were found to be sham or bogus by the AO.*
- 5) *All the creditors were genuine regular business creditors, ledgers attached from Page 4-37 of PB to prove that credit balances arose out of regular business purchases of raw material or other expenses of the assessee. These purchases were duly supported by the Tax Invoice and MVAT was also charged on all such invoices. So, the genuineness of creditors was not in doubt.*
- 6) *It was not the case of furnishing inaccurate particulars of income, as in the income-tax return, particulars of income had been duly furnished and the amount of surrendered income was duly reflected in the income-tax return. Thus, there is no inaccurate furnishing of particulars of income.*
- 7) *It was explained to AO that assessee is a Sick Company duly registered with BIFR, it could not be made to these business creditors due to financial losses payments, consequently relations with these creditors were spoiled, hence assessee was unable to produce these creditors. The Assessee agreed for the addition to have peace of mind and to avoid multiplicity of proceedings, particularly because of no additional tax liability in view of brought forward losses.”*

Submission of ld.DR :

4. The ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the ld.CIT(A) and Assessing Officer.

Findings & Analysis :

5. It is a fact that assessee had filed confirmations from the creditors. It is also a fact that assessee company is before BIFR since 2005. Assessee had also filed copies of the ledger accounts of the creditors. The assessee surrendered the amount, because assessee was unable to produce the creditors as it was already before BIFR. The AO had invoked section 41(1) for making addition. Section 41(1) is a deeming fiction.

5.1 In these facts and circumstances of the case, we are of the opinion that assessee had disclosed all the necessary details. The assessee has not furnished any inaccurate particulars. Since assessee is before BIFT due to financial difficulties. Assessee's relations have been spoiled with creditors and hence assessee could not produce the creditors before the AO. However, that

does not mean that assessee had filed inaccurate particulars of income.

5.2 The Hon'ble Bombay High Court in the case of Ventura Textiles Ltd. Vs. Commissioner of Income Tax [2020] 117 taxmann.com 182 (Bombay) has held as under :

35. Reverting back to the present case it is quite evident that assessee had declared the full facts; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated under section 271(1) (c) of the Act.

5.3 The Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC) has held as under :

“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.”

6. Thus, in the present case, the AO has made addition under 41(1) which is the deeming provision, no specific fault has been pointed out by the AO, therefore, respectfully following the Hon'ble Supreme Court(supra) and Hon'ble Bombay High Court, we direct the AO to delete the penalty under section

271(1)(c) of the Act. Accordingly, Ground Nos.3 and 4 of the assessee are allowed.

7. The appeal is allowed in above terms.

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

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th Oct, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.