

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

BEFORE PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No.1145/MUM/2024**

(Assessment Year: 2014-15)

Dori Winery Pvt. Ltd.  
366 Dhuru Lodge,  
Veer Savarkar marg,  
Mumbai 400028

**(Appellant)**

Vs.

Income tax Officer 6(2)(1)  
Aayakar Bhavan,  
Mumbai 400020

**(Respondent)**

**PAN No. AACCD1400A**

**Assessee by** : Shri Haridas Bhatt  
**Revenue by** : Smt. Smitha V. Nair (Sr. Ar.)

**Date of hearing:** 10.04.2024  
**Date of pronouncement :** 19.04.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA number 1145/M/2024 is filed by the assessee for assessment year 2014 - 15 against the appellate order passed by National faceless appeal Centre, Delhi (the learned CIT - A) for assessment year 2014 - 15 dated 25/1/2024 wherein the appeal filed by the assessee against the penalty order passed by the learned assessing officer i.e. ITO Ward 6 (2) (3), Mumbai on 26/6/2019 levying penalty under section 271 (1) ( C ) of the income tax act, 1961 (the act) of ₹ 877,980 is dismissed.
02. The assessee is aggrieved with the same and has preferred an appeal against confirmation of that penalty.

03. Grounds in ITA No. 1145/MUM/2024 are as under :-

*"A. On the facts and circumstances of the case, Commissioner of Income-Tax Appeals (the CIT Appeals) erred in confirming the penalty of Rs. 8,77,980/- u/s 271(1)(c) of the Income tax Act 1961,.*

*B. The CIT Appeals erred in levying penalty ignoring the below explanations given by the Appellant.*

*i. CIT appeals made adhoc additions @50% of expenses of Rs. 56,66,854/- resulting in addition of Rs. 28,33,427/-, Disallowance was in respect of the expenses towards salary, wages gravelling etc.*

*ii. The AO has not brought any material evidence on records to establish that the assessee has concealed income or provided inaccurate particulars.*

*iii. For imposing penalty under s. 271(1)(c), a definite finding about concealment is necessary. However, in the present appeal the addition is based on estimation."*

04. Brief facts of the case shows that assessee is a company having the object of horticulture and agricultural produce and has earned income from business of running of winery and manufacturing wine from local Grapes. The assessee company filed its return of income for assessment year 2014 – 15 in response to notice under section 148 of the income tax act declaring a total loss of ₹ 22,096,921/-. It is fact that the company has not filed its return of income



under section 139 (1) of the act and therefore the loss stated to be above is not allowable for set-off.

05. On verification of annual information return information it was found that assessee has received an amount of ₹ 7994/- as income in respect of units of non-resident. As the assessee is a non-filer notice under section 148 of the act was issued on 28/3/2018. In response to that the above referred return of income was filed. The assessee was given an opportunity however there was no compliance earlier. Subsequently on 17/10/2018 the assessee submitted the response.
06. The learned assessing officer noted that assessee has claimed salary expenses to the tune of ₹ 3,189,921, repairs and maintenance expenditure of ₹ 68,386, sundry expenses of ₹ 455,836/- and travelling expenses and transportation expenditure totaling to ₹ 5,666,854. The assessee was asked to furnish the details of these expenses and justify the claim. The assessee merely filed the month wise details of the expenses however no supporting documents were filed to substantiate the claim therefore the learned assessing officer passed an assessment order disallowing 50% of ₹ 5,666,854/- under section 37 (1) of the act. It was further noted that during the year the assessee has received a sum of ₹ 7934/- on account of income in respect of units of nonresidents under section 196A. The assessee has not filed the return of income therefore the above receipt was also considered as the income.



07. As the assessee has not filed any return of income penalty proceedings were initiated under section 271 (1) ( c ) by issue of notice under section 271 ( 1 ) ( c ) read with section 274 of the income tax act on 10/4/2019. The assessee furnished the reply on 16<sup>th</sup>/4/2019 that the case of the assessee does not fall within any of the explanation to section 271 (1) ( c ) of the act. The learned assessing officer rejected the explanation of the assessee and held that he is satisfied that the assessee has concealed particulars of income by not filing the return and provided inaccurate particulars during the assessment proceedings by not proving the authenticity of the expenses amounting to ₹ 2,833,427 and not disclosing the income of ₹ 7934/- . Accordingly the penalty of ₹ 8,77,980/- at the rate of 100 % of tax sought to be evaded was levied under section 271 (1) ( c ) of the act by order dated 28/6/2019.
08. Assessee aggrieved with the same preferred an appeal before the learned CIT – A who passed the appellate order on 25/1/2024. The learned that CIT – A noted that assessee has been given 3 opportunities however the assessee has not furnished any documentary evidence and therefore the assessee is not interested in pursuing the matter. He held that the law saves those who are vigilant and not those who sleep over the rights. Accordingly he dismissed the appeal. On the merit also he found that the facts and circumstances stated by the assessing officer are correct and accordingly on the merits also he upheld the levy of the penalty.

09. Assessee being aggrieved with the same is in appeal before us. The learned authorized representative submitted only the case law compilation consisting of four judicial precedents stating that penalty should not have been levied on the assessee on disallowance made on ad hoc basis and further it has been made purely on the basis of non-furnishing of the complete details with respect to the supporting evidences. It was submitted that assessee has furnished the details of expenditure month wise format. The learned assessing officer did not ask for the detailed explanation of each and every expenditure. Non-furnishing of the information which has not been called for in the assessment proceedings by the assessing officer does not result into levy of penalty under section 271 (1) (c) of the act.
010. The learned departmental representative vehemently stated that addition has been made to the total income of the assessee for non-furnishing of the details. The return of income was filed only in response to notice under section 148 of the Act. The reasons for which the reopening has been made has already been added to the total income of the assessee and as reopening of the assessment allows the assessing officer to reassess the other income, the necessary details were called for by the learned assessing officer with respect to the several expenditure debited by the assessee in the books of accounts. The assessee failed to substantiate the amount of expenditure incurred therefore the learned assessing officer disallowed 50% of those expenditure. The assessee

did not prefer any appeal against the assessment order. In the penalty proceedings the assessee did not furnish any information to rebut the findings in the assessment proceedings. Therefore for the disallowance of expenses the penalty proceedings were initiated through the assessment order and subsequently the learned assessing officer levied the penalty after approval of the additional Commissioner of income tax as per paragraph number 5 of the penalty order. Assessee did not make any representation before the learned CIT – A. Therefore the penalty is upheld. Thus the action of the lower authorities in confirming the penalty cannot be found fault with.

011. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that during the course of the reassessment proceedings where the notice under section 148 of the income tax act was issued the assessee filed its return of income. The assessee did not file its original return of income. When the reassessment proceedings culminated into an assessment order, the addition was made with respect to the reasons for which reassessment proceedings were initiated and further the learned assessing officer asked about the details of the expenses incurred by the assessee and claimed as deduction under section 37 (1) of the act. The assessee merely submitted the month wise amount of the expenditure incurred under each of the head. The learned assessing officer stated that assessee has failed to substantiate the same with supporting evidence. Therefore the 50% of the expenditure were disallowed. At the time



of making of the assessment order the learned assessing officer has not recorded any satisfaction with that the assessee has furnished inaccurate particulars of income or concealed income. Penalty proceedings were initiated in the assessment order. However the charge was not made specific in the assessment order. In the penalty order passed by the learned assessing officer in Para number 5 it has been stated that the assessee has concealed particulars of income by not filing the return of income and provided inaccurate particulars during the assessment by not proving the authenticity of the expenses amounting to ₹ 2,833,427/- and not disclosing the income of ₹ 7934. Therefore the penalty was levied of ₹ 877,980. Thus in the penalty order the learned assessing officer has also levied the penalty for twin charges. When the matter reached before the learned CIT – A, the appeal was dismissed for 2 reasons. The first reason given by the learned CIT – A is that the assessee did not submit any information before the learned CIT – A despite giving enough opportunities. The second reason being that the learned CIT – A did not find any infirmity in the order of the learned AO. No doubt the assessee has submitted before us many judicial precedents wherein where there is an ad hoc disallowance of the expenditure; it is held that penalty cannot be levied. Though this cannot be a universal principle. We find that had the case is that the assessee is unable to substantiate the amount of expenditure; the learned assessing officer should have disallowed 100 % percent of such expenditure by giving a sufficient reason. By disallowing 50% and



allowing 50% of that expenditure, the learned assessing officer is also not clear whether the assessee has concealed income or has furnished inaccurate particulars of income. In the assessment order the charge is not specific. In the penalty order, twin charges are invoked for the levy of the penalty. In view of this we find that when there is no specific charge raised by the Id AO at the time of assessment as well as in the notice and assessee has not been confronted with the same specific charge for furnishing reply before the assessing officer, the learned assessing officer levying a penalty on both the charges, without proving that both the charges apply, is not proper. The various judicial precedents cited before us are also support the case of the assessee that in case of ad hoc disallowance penalty under section 271 (1) (c ) does not survive unless there are specific reasons. Accordingly, we reverse the order of the lower authorities and direct the learned assessing officer to delete the penalty under section 271 (1) ( c ) of the act of ₹ 877,980/-.

012. In the result ITA number 1145/M/2024 filed by the assessee is allowed.

Order pronounced in the open court on 19.04.2024.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19.04.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:



1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai