आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 805/JP/2023
निर्धारण वर्ष/Assessment Year : 2012-13

M.s, Neelkanth Gum and Chemicals Near Railway Station Sardarshahar,Churu – 331403 (Raj)	बनाम Vs.	The ACIT Circle-Jhunjhunu Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAEFN 6786C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri G.S. Mehta, CA
राजस्व की ओर से/Revenue by: Smt. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख/Date of Hearing : 25/01/2024
उदघोषणा की तारीख/Date of Pronouncement: 09 /04/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 06-12-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

> ''1. The ld. CIT(A) was not justified in sustaining levy of penalty of Rs.16,64,000/- u/s 271(1)(c) of the Act levied on reduction in deduction u/s 80IB of the Act by avoiding the binding precedents of different judicial pronouncements of higher authorities referred to by the assessee nor did he agree

to the findings of appellate authorities deleting penalty on identical facts even in assessee's own cases.

2. Without prejudice to Ground No. 1, ld.CIT(A) has erred in law in sustaining levy of penalty of Rs.16,64,000/- under section 271(1)(c) of I.T. Act which was initiated by show cause notice dated 11-12-2014 by the AO who himself was not sure whether penalty was for concealment of income or for inaccurate particulars of income as he did not strike off the irrelevant portion.

2.1 Apropos Ground Nos. 1 & 2 of the assessee, brief facts of the case are that the assessee firm had e-filed the return of income on 17-08-2012 declaring total income of Rs. 6,34,43,500/- after claiming deduction of Rs.2,11,47,842/- under section 80-IA of the Act. Further the assessment was completed u/s 143(3) of the Act on 11-12-2014 at a total assessed income of Rs.6,88,25,860/- which included addition on account of exclusion of deduction in respect of DEPB, VKUY, VKGUY provision and Duty Draw Back Provision amounting to Rs.53,82,360/-. Simultaneously, penalty proceedings were initiated u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. It is also worthwhile to mention from the penalty order dated 22-03-2017 wherein the AO proceeded to levy the penalty of Rs.16,64,000/- on the assessee by observing as under:-

''6. In view of the above mentioned facts and circumstances of the case, it is crystal clear that the assessee has concealed the particulars of its income and furnished inaccurate particulars of such income to the extent of Rs.53,82,460/- by way of wrong claim of deduction u/s 80-IB on DEPB, VKUY, VKGUY provision and Duty Draw Back

Provision. Hence, the provisions of Section 271(1)© of the Act are applicable in this case and it is a fit case to levy of penalty u/s 271(1)© of the Act. I, therefore, proceed to levy of penalty of Rs.16,64,000/- which is calculated as under:-

Computation of Penalty

A. Total assessed income as per order u/s 143(3)	Rs.5,88,25,860/-
B. Total assessed income reduced by the income in respect of which Particulars have been concealed or inaccurate particulars have been filed	Rs.6,34,43,500/-
C. Tax on total assessed income	Rs.2,12,67,191/-
D. Tax on total assessed income (B) as above	Rs.1,96,04,042/-
E. Tax Sought to be evaded (C-D)	Rs. 16,63,149/-
F. Minimum penalty payable @ 100% of Tax sought to be evaded	Rs. 16,63,149/-
G. Maximum penalty @ 300% of tax sought to be evaded	Rs. 49,89,447/-
H. Penalty imposed	Rs. 16,64,000/-

7. In view of the facts and circumstances of the case as discussed above a penalty of Rs.16,64,000/- is imposed on the assessee u/s 271(1)©of the I.T. Act 1961.

2.2 Being aggrieved by the order of the AO, the assessee carried the matter before the ld. CIT(A) who confirmed the action of the AO by dismissing the grounds of appeal raised by the assessee before him and the decision taken by the ld. CIT(A) is mentioned as under:-

‘’4. Decision:

4.1 The facts relating to the present appeal, in brief, are that the assessee had filed his return of income on 17.08.2012 declaring total income of Rs.

6,34,43,500/-. After claiming deduction of Rs 2,11,47,832/- u/s 8019. During the course of assessment proceedings, the AO found that the assessee had taken assistance out of DEPB, Vishesh Krishi Udyog Yojna (VKUY), Vishesh Krishi Gramin Udyog Yojna (VKGUY) and duty drawback (together called "export benefit" in this order) as income derived from the enterprise and had claim 801B accordingly. The AO following the ratio decided by Hon'ble Apex Court in the case of Liberty India vs CIT 317 ITR 218 disallowed claim of deduction u/s 801B to the extent of assistance to the assessee from the above scheme and calculated the total income of the assessee at Rs. 6,88,25,860/-. The disallowance so made by the AO stands confirmed by the Hon'ble ITAT Jaipur Bench vide ITA no. 288/JP/2016 dated 30.01.2017. On being noticed the assessee took following plea before the AO

"On merits also there is no concealment or filing of inaccurate particulars as there is no material on record to justify positive act of concealment or filing of inaccurate particulars on the part of the assessee.

It is respectfully submitted that there is no concealment of income of furnishing of inaccurate particulars to attract the provision of section 271(1)(c). The penalty on the grounds of the concealment can be imposed if there conscious and deliberate concealment of income on the part of the assessee. There is no melafide act of omission or commission and provision of section 271/271(1)(c) are not attracted. The deduction claimed u/s 801B was disallowed on legal grounds which could not be anticipated by the assessee.

Mumbai ITAT bench in the case of Salman Khan vs ACIT (2014-ITRV-ITAT-MUM-149] held that if any claim is debatable there would be no penalty u/s 271(1)(c).

Mumbai ITAT Bench is case of Schrader Duncan Ltd vs ACIT (2015- ITRV-ITAT-MUM-007) has held that when the addition the basis of which the penalty was imposed has become doubtful debatable, penalty imposed u/s 271(1)(c) of the act cannot survive.

The assessee has already been filed an appeal to Hon'ble ITAT Jaipur, it is requested that the proceedings may kindly be kept pending till the disposal of appeal and oblige.'',

After having considered the above reply the AO has taken note of chronological sequence of events and had come to conclusion that as on the date of filing of return of income the issue of exclusion of export incentive from the amount on which 801B was to be calculated was res-judicata. By not following the law settled by Hon'ble Supreme Court the assessee has concealed particulars of income as per the provisions of explanation to section 271(1) (c). The AO further follows the decision of Hon'ble supreme Court in the case of UOI vs Dharmendra Textile Processors 306 ITR 277 (SC) and decides that it is not mandatory for the revenue to prove mens- rea in order to levy penalty and therefore, levied penalty of Rs. 16,64,000/- u/s 271(1)(c). Aggrieved by this decision of AO the assessee is in present appeal.

4.2 Ground no. 1: The argument of the assessee is based upon the following two propositions-

i. The issue is debatable and therefore, penalty u/s 271(1)(c) should not be levied.

ii. The assessee had made full disclosure of the facts which has formed basis of the quantum addition. Therefore, there has been no concealment on the part of the assessee or production of inaccurate detail which may make the assessee liable to penalty u/s 271(1)(c).

For both the propositions the assessee had relied upon a number of Judicial Authorities, which for sake of brevity are not being extracted here in this order. It is therefore, pertinent to first direct ourselves to the correctness of these propositions.

4.2.1 It is argument of the assessee that the decision of liberty India (Supra) has now been over ruled by Commissioner of Income-tax v. Meghalaya Steels Ltd [2016] 67 taxmann.com 158 (SC), therefore, the issue of exclusion of export benefits has now become debatable and therefore, penalty should not be levied on the assessee who had included the export benefit for the purpose of calculation of exempt income. In order to understand the binding law on the issue of treatment that needs to be given to export benefit while calculating

deduction u/s 801B, it is profitable at this point to refer to the ratio decided by the Hon'ble Supreme Court in above mentioned two cases.

In Liberty India v. Commissioner of Income-tax [2009] 183 Taxman 349 (SC) AUGUST 31, 2009 the Hon'ble Supreme Court decided as follows-

14. Analysing Chapter VI-A, we find that section 80-IB/80-IA are the Code by themselves as they contain both substantive as well as procedural provisions. Therefore, we need to examine what these provisions prescribe for "computation of profits of the eligible business". It is evident that section 80-1B provides for allowing of deduction in respect of profits and gains derived from the eligible business. The words "derived from" is narrower in connotation as compared to the words "attributable to". In other words, by using the expression "derived from, Parliament intended to cover sources not beyond the first degree. In the present batch of cases, the controversy which arises for determination is: whether the DEPB credit/Duty drawback receipt comes within the first degree sources? According to the assessee(s). DEPB credit/duty drawback receipt reduces the value of purchases (cost neutralization), hence, it comes within first degree source as it increases the net profit proportionately. On the other hand, according to the Department, DEPB credit/duty drawback receipt do not come within first degree source as the said incentives flow from Incentive Schemes enacted by the Government of India or from section 75 of the Customs Act, 1962. Hence, according to the Department, in the present cases, the first degree source is the incentive scheme/provisions of the Customs Act. In this connection, Department places heavy reliance on the judgment of this Court in Sterling Food's case (supra). Therefore, in the present cases, in which we are required to examine the eligible business of an industrial undertaking, we need to trace the source of the profits to manufacture. (see CIT v. Kirloskar Oil Engines Ltd. [1986] 157 ITR 762(Bom.).

15. Continuing our analysis of sections 80-1A/80-IB it may be mentioned that sub-section (13) of section 80-1B provides for applicability of the provisions of sub-section (5) and sub-sections (7) to (12) of section 80-IA, so far as may be. applicable to the eligible business under section 80-IB. Therefore, at the outset, we stated that

one needs to read sections 80-1, 80-IA and 80-IB as having a common Scheme. On perusal of sub-section(5) of section 80-IA, it is noticed that it provides for manner of computation of profits of an eligible business. Accordingly, such profits are to be computed as if such eligible business is the only source of income of the assessee. Therefore, the devices adopted to reduce or inflate the profits of eligible business has got to be rejected in view of the overriding provisions of sub-section (5) of section 80-1A, which are also required to be read into section 80-IB [see section 80lB(13)) . We may reiterate that sections 80-1, 80-IA and 80-1B have a common scheme and if so read it is clear that the said sections provide for incentives in the form of deduction(s) which ara linked to profits and not to investment. On analysis of sections 80-1A and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section(2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words "derived from Industrial undertaking" as against "profits attributable to industrial undertaking".

16. DEPB is an incentive. It is given under Duty Exemption Remission Scheme. Essentially, it is an export incentive. No doubt, the object behind DEPB is to neutralize the incidence of customs duty payment on the import content of export product. This neutralization is provided for by credit to customs duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components etc.. DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per basic customs duty and special additional duty payable on such deemed imports. Therefore, in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from section 75 of the Customs Act, 1962, hence, Incentives profits are not profits derived from the eligible business under section 80-IB. They belong to the category of ancillary profits of such Undertakings.

17. The next question is what is duty drawback? Section 75 of the Customs Act, 1962 and section 37 of the Central Excise Act, 1944 empower Government of India to provide for repayment of customs and excise duty paid by an assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified class. The Rules do not envisage a refund of an amount arithmetically equal to customs duty or central excise duty actually paid by an individual importer-cum-manufacturer. Sub-section (2) of section 75 of the Customs Act requires the amount of drawback to be determined on a consideration of all the circumstances prevalent in a particular trade and also based on the facts situation relevant in respect of each of various classes of goods imported. Basically, the source of duty drawback receipt lies in section 75 of the Customs Act and section 37 of the Central Excise Act.

18. Analysing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression "profits derived from industrial undertaking" in section 80-IB.

On the other hand in the case of Commissioner of Income-tax v. Meghalaya Steels Ltd [2016] 67 taxmann.com 158 (SC) MARCH 9, 2016 was concerned with the subsidy like transport subsidy, interest subsidy and power subsidy which are given to an enterprise as reimbursement of cost of production of goods of a particular business. In this decision the ratio of Liberty India (supra) was not over ruled. Rather, the Hon'ble Supreme Court made a distinction between export incentive and incentive towards subsidizing the cost of production. In fact the Hon'ble Supreme Court upheld the decision of Liberty India (Supra). The following extract form the decision makes the above argument apparent beyond doubt -

**20. Liberty India's case (supra) being the fourth judgment in this line also does not help Revenue. What this Court was concerned with was an export incentive, which is very far removed from reimbursement of*

an element of cost. A DEPB drawback scheme is not related to the business of an industrial undertaking for manufacturing or selling its products. DEPB entitlement arises only when the undertaking goes on to export the said product, that is after it manufactures or produces the same. Pithily put, if there is no export, there is no DEPB entitlement, and therefore its relation to manufacture of a product and/or sale within India is not proximate or direct but is one step removed. Also, the object behind DEPB entitlement, as has been held by this Court, is to neutralize the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself.

22.....We have not been impressed by the submissions advanced by Mr. Bandhyopadhyay (The counsel for the Department). The judgment of the Apex Court in the case of Liberty India (supra) was in relation to the subsidy arising out of customs draw back and duty Entitlement Pass- book Scheme (DEPB). Both the incentives considered by the Apex Court in the case of Liberty India could be availed after the manufacturing activity was over and exports were made. But, we are concerned in this case with the transport and interest subsidy which has a direct nexus with the manufacturing activity inasmuch as these subsidies go to reduce the cost of production. Therefore, the judgment in the case of Liberty India v. Commissioner of Income Tax has no manner of application.

In background of the decision of Meghalaya Steel it is apparent that there is no debate on exclusion of export benefit from the profit of enterprise while calculating the deduction u/s 801B. The proposition made by the assessee that the quantum addition in this case was made a debatable point, therefore, emanates from entirely incorrect appreciation of the ratio of the Meghalaya Steel (Supra). The proposition of the assessee therefore, fails.

4.2.2 In this case at the time of filing of return the issue of non-inclusion of export benefit for calculation of deduction u/s 801B was an issue res-judicata. The ratio of Liberty India was before the

assessee and the ratio of Meghalaya Steel (Supra) even if interpreted incorrectly was not available to the assessee. In this situation it is found that the assessee has made claim of deduction u/s 80IB which is not incorrect in law, but is also wholly without any basis and explanation furnished by him for making such claim. The claim made by the assessee is therefore, not found to be bona-fide at all. The proposition no. ii made by the assessee is therefore, of no avail. The decision of the AO that levy of penalty is as per the provision of explanation 1 to section 271(1)(c) is found to be correct. For this proposition apart from the authority cited by the AO, reliance is made upon the decision of Delhi High Court in the case of CIT vs Zoom Communication Pvt Ltd 191 Taxman 179 (Delhi), Escorts Finance Ltd 183 Taxman 453 (Delhi).

4.2.3 In view of the above the ground no. 1 is dismissed.

4.3 Ground no. 2: This ground is not only argumentative in nature but is also found to be based upon non-appreciation of the impugned order of penalty. In order to substantiate the above observation it will be profitable to quote para-5.4 of the impugned order.

5.4 There is no requirement of law that there should be deliberate or intentional concealment of income or furnishing of inaccurate particulars of income for the purpose of levy of penalty u/s 271(1)(c). The word deliberate appearing in clause (c) of section 271(1) had been deleted with effect from 01.04.1964. This amendment clarifies beyond doubt that element of mens- rea is not an essential requirement for the purpose of levy of penalty. Moreover, the explanation-1 provides that the amount added or disallowed shall for the purpose of clause (c) of sub-section (1) of section 271 of the IT Act, 1961 be deemed to represent income in respect of which particulars have been concealed. As the assessee has not satisfied the conditions mentioned in Clause (B) of the explanation-1, the amount of Rs. 53,82,360/- is deemed to represent his income in respect of which particulars have been concealed by way of furnishing inaccurate particulars of true Income.

4.4 In terms of the discussion above ground no. 2 is also dismissed.

5. The appeal filed by the assessee is dismissed.'',

2.3 Further being aggrieved by the order of the ld.CIT(A), the assessee carried the matter before this Bench for which the ld.AR of the assessee filed following written submission and case laws with the prayer to delete the penalty sustained by the ld. CIT(A).

Brief facts of case:

Assessee, a manufacturer and exporter of Guwar Gum from Guwar received cash assistance from Govt. of India under different schemes called DEPB (Duty Entitlement Pass Book), Vishesh Krishi Udyog Yojana (VKUY), Vishesh Krishi Gramin Udyog Yojan (VKGUY), As per section 28(iiib) and section 28 (iiid) of I.T. Act, the amount of such cash assistance from Govt. of India is being included in "profit and gains of business or profession". Assessee, after treating such sums as profit and gains from business, claimed deduction u/s. 80IB of Act which was disallowed by the ld. AO. On such disallowance, a show-cause notice for "concealment of income or furnishing of inaccurate particulars of Income" was issued. Penalty of Rs.16,64,000/- u/s. 271(1)(c) of Income tax Act was levied. In first appeal, ld. CIT(A) avoided the different judicial pronouncement supporting both the grounds of appeal by giving evasive reason "**for the sake of brevity**" (refer second para at page (4) of order of ld.CIT(A)) and dismissed the appeal :

GROUNDS OF APPEAL:

Ground No. (1) Ld. CIT(A) (NFAC) was not justified in sustaining levy of penalty of Rs.16,64,000/- u/s. 271(1)(c) of Act, levied on reduction in deduction u/s. 80IB of Act by avoiding the binding precedents of different judicial pronouncements of higher authorities, referred to by the assessee nor did he agree to the findings of appellate authorities deleting penalty on identical facts even in assessee's own cases.

As against returned income of 6,34,43,500/-, the assessed income was Rs.6,88,25,860/- for the reason that deduction under section 80IB of Act was reduced by Rs.53,82,360/- which was on cash assistance and DEPB received from Govt. of India, treated by assessee as profit from business as per the provisions of section 28 (iiib) and (iiid) of I.T. Act, repeated hereunder:

Profits and gains of business or profession:

28. *The Following income shall be chargeable to Income tax under the head "Profit and gains of business or profession",-*

(iiib) *cash assistance (by whatever name called) received or receivable by any person against export under any scheme of the Government of India;*

(iiic) **…….**

(iiid) *any profit on transfer of the Duty Entitlement Pass Book Scheme, being Duty remission Scheme under the export and import policy formulated and*

announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

Assessee, under bona-fide belief, treated the cash assistance and DEPB received from Central Government, as Income from business on which it claimed deduction under section 80IB of I.T. Act but was disallowed by the ld.AO to that extent. On such reduced deduction u/s. 80IB of I.T. Act ld. AO levied penalty of Rs.16,64,000/- u/s. 271(1)(c) of I.T. Act, avoiding the fact that when Assessee had disclosed all the material fact and figures before the ld. AO in respect of deduction u/s. 80IB of I.T. Act, no penalty could be levied u/s. 271(1)(c) of I.T. Act. Reliance is placed different judicial pronouncements (Including Hon'ble Supreme Court) (**P.B. page 4 & 5**):

In Assessee's own cases of earlier years, Ld.CIT(A)-3, Jaipur, following the different judicial prononcements had deleted the penalty on identical detailed as under:

Asstt. year	**Appeal Number**	**Amount of penalty**	**Paper book page**
2006-07	59/JPR/17-18	6,45,000/-	**6 to 16**
2007-08	58/JPR/17-18	9,05,000/-	**17 to 27**

Therefore the penalty sustained by ld. CIT(A) was not as per the different judicial pronouncements or as per the final finding of Appellate authorities in Assessee's own cases of earlier years.

GROUND No. (2) Without prejudice to ground No. (1), Ld. CIT(A) has erred in law in sustaining levy of penalty of Rs.16,64,000/- under section 271(1)(c) of I.T. Act which was initiated by show-cause notice dated 11.12.2014 by the ld. AO who himself was not sure whether penalty was for concealment of Income or for inaccurate particulars of income as he did not strike off the irrelevant portion

The show-cause notice for penalty u/s. 271(1)(c) of Act issued with order under section 143(3) of I.T. Act reads as under (**P.B. page No. 28**):

*"**Have concealed the particulars of your income or furnished inaccurate particulars of such income.**"*

Non-striking of irrelevant clause in the penalty notice shows that charge made against the assessee under section 271(1)(c)) is not firm and shows non-application of mind of the assessing Officer. There was thus ambiguity in the mind of the ld. AO for the nature of default committed by the Assessee for the proposed penalty u/s. 271(1)(c) of I.T. Act. It is settled law that where Assessing Officer himself was not sure about nature of default committed by the Appellant, no penalty under section 271(1) of IT Act could be levied. Reliance is further placed on other judicial pronouncements (with head-notes) (**P. B. page No. 29 to 32**):

Hon'ble Supreme Court in case of CIT Vs. SSA's Emerald Meadows (S.L.P. (C) No. 23272 of 2016 (**P.B. Page No. 33**) had dismissed SLP of Department on identical issue.

It may be noted that the ld. AR of the assessee has relied on the following case laws concerning the issue in question.

1. CIT vs Tudor KnittingWorks Pvt. Ltd. (2014) 366 ITR 236 (P&H) *wherein it is held that concealment of income, furnishing of inaccurate particulars, no false claim by the assessee u/s 80IB, Claim found to be incorrect, No mens rea on part of the assessee to claim deduction, Divergent judicial opinion on claim made by the assessee, Debatable issue, Penalty cannot be imposed.*
2. Rave Entertainment Pvt. Ltd. vs CIT (2015) 281 CTR (All) 472 *wherein it is held that disallowance of claim of deduction, assessee has made the claim for deduction/s 80IV which was rejected by the AO, Claim of the assessee is legal claim, Nothing was concealed by the assessee, Entire material was available before the AO, For the legal advice rendered by Chartered Accountant under bona fide belief, no penalty u/s 271(1)© is leviable.*
3. Pr. CIT vs Virgo Industries (2019) 412 ITR 146 (P&H) *wherein it is held that concealment of income or filing of inaccurate particulars of income, Industrial undertaking in special category, Special claim deduction u/s 80IC, Bona fide claim, not a case of willful furnishing of inaccurate particulars or concealment of income, Deletion of penalty not erroneous.*
4. CIT vs Petals Engineers (P) Ltd. (2014) 264 CTR (BOM) 577 *wherein it is held that disallowance of claim for deduction, When assessee had disclosed*

material facts and there is neither suppression of the facts nor misinterpreted of facts by the assessee, the order of penalty was not sustainable.

5. CIT vs Arisudana Spinning Mills Ltd. (2010) 326 ITR 429 (P&H) *wherein it is held that claim for special deduction u/s 80IA, Details regarding special claim furnished, Claim whether allowable – debatable issue, No concealment of income or furnishing of inaccurate particulars. Penalty u/s 271(1)© could not be levied.*
6. CIT vs Raj Overseas (2011) 336 ITR 262 (P&H) wherein it is held that bona fide claim of deduction, No concealment or furnishing inaccurate particulars, Penalty u/s 271(1)© not leviable.
7. CIT vs Reliance Petroproducts Pvt Ltd (2010) 322 ITR 158 (SC) *wherein it is held that concealment of income, no information given in return found to be incorrect, Making incorrect claim, Does not amount to concealment of particulars.*

2.4 On the other hand, the ld. DR strongly supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO levied the penalty of Rs.16,64,400/- u/s 271(1)©of the Act holding that it is crystal clear that the assessee has concealed the particulars of its income and furnished inaccurate particulars of such income to the extent of Rs.53,82,460/- by way of wrong claim of deduction u/s 80-IB on DEPB, VKUY, VKGUY provision and Duty Draw Back Provision. Hence, the provisions

of Section 271(1)© of the Act are applicable in this case and it is a fit case to levy of penalty u/s 271(1)© of the Act which has been confirmed by the ld.CIT(A) holding that the decision of the AO that levy of penalty is as per the provision of explanation 1 to section 271(1)(c) and it is found to be correct. For this proposition apart from the authority cited by the AO, reliance is made upon the decision of Delhi High Court in the case of CIT vs Zoom Communication Pvt Ltd 191 Taxman 179 (Delhi), Escorts Finance Ltd 183 Taxman 453 (Delhi). It is also noted that the AO issued the show cause notice u/s 271(1)(c) of the Act dated 11-12-2014 (PB 28) mentioning *that ''271(1)(c) – have concealed the particulars of your income or furnished inaccurate particulars of such income''* wherein it is found that Non-striking of irrelevant clause in the penalty notice shows that charge made against the assessee under section 271(1)(c)) is not firm and shows non-application of mind of the AO. There was thus ambiguity in the mind of the AO for the nature of default committed by the Assessee for the proposed penalty u/s. 271(1)(c) of I.T. Act. It is settled law that where AO himself was not sure about nature of default committed by the assessee, no penalty under section 271(1) of IT Act could be levied. Reliance is further placed on other judicial pronouncements (with head-notes) (**P. B. page No. 29 to 32**). It is not required to repeat the facts of the case as the ld. AR of the assessee in his written submission narrated the facts lucidly. We also found from submissions of the ld. AR of the assessee that in assessee's own

case the ld. CIT(A) -3, Jaipur had deleted the penalty on identical facts as per details given hereunder:-

Asstt. year	Appeal Number	Amount of penalty	Paper book page
2006-07	59/JPR/17-18	6,45,000/-	**6 to 16**
2007-08	58/JPR/17-18	9,05,000/-	**17 to 27**

In view of the above facts and circumstances of the case and also the decisions cited supra, we do not concur with the order of the ld.CIT(A) and there is merit in the submissions of the ld.AR of the assessee. According, the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assesee is allowed

Order pronounced in the open court on 09 /04/2024.

Sd/- Sd/-

(डा॰ मीठा लाल मीना) (संदीप गोसाई)
(Dr. Mitha Lal Meena) (Sandeep Gosain)
लेखा सदस्य / Accountant Member न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09 /04/2024
*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- M/s. Neel Kanth Gum and Chemicals, Jhunjhunu
2. प्रत्यर्थी / The Respondent- The ACIT, Circle- Jhunjhunu
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 805/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar