

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 5095 & 5096/Del/2019  
(Assessment Year : 2013-14 & 2014-15)**

ACIT Circle-59(1), Delhi	Vs.	Sh. Ateeq Ahmed 306/7, IIIrd Floor, Aditya Complex, Community Centre, Preet Vihar, New Delhi PAN : AEIPA7958R
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. Majeedullah, CA
Revenue by	Sh. Kanv Bali, Sr. DR & Shri Vivek Vardhan, Sr. DR

Date of hearing:	08.03.2024
Date of Pronouncement:	29.04.2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

These appeals have been preferred by the Revenue against the order dated 29.03.2019 of CIT(A)-23, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short 'FAA') in Appeal No. 210/2018-19 arising out of an appeal before it against the order dated 29.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-59(1), New Delhi (hereinafter referred as the AO). As common issues run across both the appeals, therefore, these were heard together and now decided vide this common order.

2. The assessee is an individual engaged in the business of wholesale manufacturing, processing and trading of fresh and frozen meat under the name and style of M/s Omar International. The assessee had made a claim under section 80 IB on turnover generated on manufacturing/processing unit. The Bijnore, Uttar Pradesh.

3. At the outset it was pointed out by the Learned AR that the appeal of Revenue for AY 2013-14 suffers from Low Tax effect. The Ld. DR admitted the same. In this regard it comes up that the challenge of the revenue was in regard to deleting the penalty of ₹ 3,773,633 which was levied by the AO on the basis of downsizing the claim of deduction under section 80IB of the Act. The tax effect shown in the appeal memo is ₹ 37,73,633/-. In the light of aforesaid admitted facts, this appeal for AY 2013-14 is dismissed for low tax effect, with liberty to Revenue to get it restored, if matter is one established to be falling in category of exceptions for contesting low tax effect appeals.

4. Coming to the appeal of the Revenue for AY 2014-15 following grounds are raised:

*“1. The Ld. CIT(A) has erred in deleting penalty levied of Rs. 1,07,39,759/- u/s 271(1)(c) of the Act. The order of the Ld. CIT(A) is bad in law on the facts and in the circumstances of the case.*

*2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the penalty of Rs. 1,07,39,759/- stating that these issue are basically at par with the issue of downsizing the claim of deduction u/s 80IB on account of profit on trading activities, in A.Y. 2013-14, on which AO did not impose any penalty. Also, the reasoning adopted in the above adjudicated appeal is squarely applicable in the appeal, the finding given by the Ld. CIT(A) is not correct as penalty u/s 271(1)(c) also levied in A.Y. 2013-14.*

*3. The appellant craves leave to add/alter/delete/modify the grounds of appeal before or during the hearing of appeal.”*

*The revised grounds of appeal duly approved by the Pr. Commissioner of Income Tax, Delhi-20, New Delhi.”*

5. Heard and perused the record. Ld. DR submitted that Ld. CIT(A) has erred in laying too much stretch on the intention of assessee and mere on claim of bonafide, the assessee could not have been benefited when otherwise no appeal against quantum order was filed. It was submitted that there are so many check up in accounting procedure so mere on claim of mistake committed assessee cannot escape penalty proceedings.

5.1 Ld. AR rebutted the same and stood by the order so Ld. CIT(A) reasserting the submissions as made before the Ld. CIT(A).

6. Giving thoughtful consideration to the matter on record and the submissions it comes up that during assessment proceedings the AO had downsized claim of deduction under section 80IB on three counts:

6.1 Addition of Rs. 44,15,913/- was made by disallowing the excess claim of depreciation debited in the P&L account of the trading unit which was the non-exempt unit. Regarding penalty on claim of the depreciation, in the penalty order, the AO has stated that vide submission dated 08.12.2016, the AR agreed that the depreciation to the amount of Rs. 44,15,913/- has been exaggerated in the P&L account.

6.2 Second, addition of Rs.22,64,711/- was made by disallowing the interest expenses on work in progress (WIP) as it was supposed to be capitalized. The AO had disallowed the interest expenses considering that same were not business expenses under section 36(1)(iii) of the Act because assessee was showing slaughterhouse work in progress in the assets. Lone for the construction of slaughterhouse WIP had been taken and the interest incurred on this loan was debited in the P&L account in both the trading and processing units. AO was of the view that interest expenses incurred for any borrowing undertaken for any capital asset which has not been put into use should be capitalised in the cost of the asset and such interest expenses cannot

be debited in the P&L account.

6.3 Third, addition of Rs.2,57,09,320/- was made by disallowing the claim under section 80 IB of the act on duty drawback received. In this regard you observed assessee had claimed deduction under section 80 IB of the Act on the income from duty drawbacks. Relying judgement of Hon'ble Supreme Court in the case of Liberty India versus Commissioner of income tax(2009) SCC 328 the AO held that duty drawbacks are incentives and not profits as they are derived from the activity of export and do not directly emanate from the eligible business of the assessee.

7. In response to the notice under section 271(1)(c) of the Act, it was submitted on behalf of the assessee that the disallowance is arising out of clerical error and out of the voluntary admission of the error additions were made. It was claimed that assessee had not preferred any appeal and deposited the demand within 30 days. Further it was submitted that the assessee is suffering loss due to the ban by the Central government on the cattle sale/purchase.

8. The Ld. Assessing officer was not satisfied and while levying penalty observed in para-4.1 as follows:-

*“4.1 The reply of the assessee has been perused and found not tenable on account of the following:-*

*(a) That the assessee did not declare the correct income in the return filed.*

*(b) That the assessee did not declare inaccurate particulars at the beginning of the assessment proceedings.*

*(c) If the contention of the assessee is accepted that it was a clerical mistake, it could have been rectified by filing revised return within due time but he has not done so.*

*(d) That the assessee admitted his mistakes when specific questions were asked and material on record was confronted.*

*(e) That explanation offered by the assessee is not satisfactory as he*

*has termed all the disallowances as clerical mistakes which is highly improbable given the scale of the business of the assessee.*

*(f) That had the case not been selected for scrutiny, the assessee would have got away from payment of tax which were otherwise payable on his part.*

*(g) That the assessee always had on back of mind that even if case is selected for scrutiny, he can get away merely by paying the tax, which in any case, was payable by him.*

*The contention of the assessee that he voluntarily offered income for taxation is not tenable as the same was offered when the issues were raised and confronted to the assessee subsequent to the directions u/s 144A issued by JCIT, Range-59 and he found himself cornered.*

*In view of the above, the offer made by the assessee cannot be termed as voluntary and hence, does not absolve the assessee of section 271(l)(c) penalty. Above view has also been supported by the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. vs CIT CA No. 9772 of 2013 (SC). According to the Supreme Court, the Assessing Officer should not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation" "amicable settlement", etc to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. The explanation to section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing officer, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence, that income was not concealed or inaccurate particulars were not furnished.*

*Mere because the assessee claims the admission to be voluntary by using such phrases like "buying peace", "avoid litigation" or "amicable settlement", the assessee's conduct in not offering the income in the return cannot be explained away.*

9. In appeal before CIT(A) in regard to First disallowance of excessive depreciation the Ld. AR submitted that vide order-sheet entry dated 15.09.2016, the AO did ask to provide split of expenses between Trading and Processing and on the next appearance he had given the calculation and assessee agreed to the addition of Rs. 44,15,913/-. The AR pointed out to CIT(A) that the AO has not disputed the genuineness of the claim. Only point was that the figure of depreciation should have been added for calculating

trading profit but by inadvertent mistake of accountant, it remained to be added in the figure of trading profit. As soon as it came to the notice, it was accepted and taxes were paid within prescribed time by the demand notice. The AR submitted before CIT(A) that by the conduct of the appellant, the bona-fide have been proved and ratios of **CIT Vs. Reliance Petroproducts Pvt. Ltd.** [2010] 322 ITR 158 as well as **Price Waterhouse Coopers Vs. CIT. 348 ITR 306 (SC)** are applicable.

9.1 Learned CIT(A) gave due consideration to the submissions and accepted the argument of the AR that it was inadvertent mistake and the appellant has proved bona-fide by conduct (as soon as it came to the notice, it was accepted and taxes were paid the within the time prescribed by the demand notice), cannot be brushed aside and held that this case is covered by the ratio of Hon'ble Supreme Court in the case of **Price Waterhouse Coopers Vs. CIT. 348 ITR 306 (SC)** i.e. no penalty can be levied on bona-fide mistakes.

10. Regarding penalty on non-capitalisation of the interest, the AR stated before the CIT(A) that though the appellant accepted the view point in good faith, however, it is debatable point. The AR relied upon the ratio of jurisdictional high court in case of **CIT Vs. Monnet Industries Ltd [2009] 176 Taxman 81 (Delhi)** where it was laid down that interest paid on borrowed fund for mere extension of existing business, is allowable as deduction under section 36(1 )(iii) of the Act. The AR pointed out that this case has been affirmed by the Hon'ble SC and reported in [2012] 25 taxmann.com 236 (SC).

10.1 CIT(A) gave due consideration to the submissions and accepted the reliance of AR on the judgement of Hon'ble Delhi High Court in case of **Monnet Industries Limited (supra)** that interest paid on borrowed fund for mere extension of existing business, is allowable as deduction under section 36(1)(iii) of the Act. This case has been affirmed by Hon'ble Supreme Court.

CIT(A) observed that in the present case also, the expansion for which interest was paid was certainly in the same line of business and under the common management therefore addition was on a debatable point and penalty u/s 271(1)(c) cannot be levied by following the ratio of Reliance Petroproducts Pvt. Ltd.(supra). CIT(A) thus concluded that:

*“8.11 In view of the above discussion, it can be concluded that as far as above stated two issues are concerned, it was matter of calculation as to how much profit was eligible for claim of deduction u/s 80IB.”*

11. The third issue was of downsized claim of deduction u/s 80IB on account of receipt due to Duty draw back claim. CIT(A) decided this in favour of assessee on basis of findings in AY 2013-14 where in it was observed as follows:

*“5.2 I note that penalty has been levied by the AO for (deemed) concealment of income relating to downscaling of claim u/s 80IB(10) amounting to Rs.37,73,633/-. The appellant has pointed out to plethora of jurisprudence to point out that penalty cannot be levied merely because a disallowance has been made or merely because a claim has been downscaled. The appellant has pointed out that a case of concealment has not been established. The appellant has relied upon order of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd., reported as 322 ITR 158 (SC).*

*5.3 As far as the appellant not challenging the downscaling of claim u/s 80IB is concerned, I note that Hon'ble Supreme Court in the case of Sir Shadilal Sugar & General Mills Ltd. Vs. CIT (1987) 168 ITR 705 (SC) have held that if there is no specified and unambiguous admission to concealment, mere agreement to be taxed on certain amount cannot give rise to presumption of concealment.*

*5.4 I find that the AO has merely downscaled the addition, that too on basis of the figures in the Profit and loss account. The AO has not established as to what particulars were concealed or what was the inaccuracy in the particulars filed. The Hon'ble Delhi High Court in*

*the case of CIT Vs. Jakson Ltd., order dated 29.01.2013, (2013) 31 taxmann.com 416(Delhi) had upheld deletion of penalty levied u/s 271(1)(c) relating to downscaling of claim u/s 80IB(10)...*

....

....

*5.12 It is seen that the downsizing of the claim was based upon the figure in the profit and loss account. Neither any particulars were concealed, nor any inaccurate particulars were filed. A perusal of the assessment order as well as order imposing penalty shows that the AO did not make a case as to how in-accurate particulars were filed. In fact, finally the AO did not levy penalty on account of furnishing inaccurate particulars. The penalty has been levied under Explanation 1. However, the plea of the appellant that his claim was bona-fide because he promptly paid the taxes, has not been discussed by the AO. Also, it can be seen that the Explanation-1 has been straight pressed into service without any discussion. Therefore, I am of the humble opinion that firstly, Explanation-1, cannot be invoked straight when the initiation of penalty proceedings was only for furnishing inaccurate particulars and secondly the appellant is able to prove that all the facts relating to and material to the computation of total income of the appellant had been disclosed and the explanation was bona-fide.*

*5.13 Regarding the plea that no show cause notice was given for downsizing the claim of deduction under section 80IB on account of receipt of duty drawback claim. I have perused the copy of Order-sheet (attached as Annexure-1 to this appellate order), it does not contain any reference to downsizing of claim of deduction made u/s 80IB by excluding receipt on account of duty draw back. I have also perused, the final show cause notice dated 11.03.2016 and reply dated 21.03.2016, filed in response(reproduced in the assessment order) and found that these documents are talking about basic eligibility of claiming deduction u/s 80IB and proposes to disallow entire education*

*claimed u/s 80IB but there was no whisper about duty drawback. Therefore, I am inclined to accept the argument of the AR that there was no show cause notice by way of order sheet entry or written show cause notice for downsizing the claim of deduction under section 80 IB on account of receipt of duty drawback claim. Therefore, it is to be treated at par with the agreed downsized of claim of deduction under section 80IB on account of the profits derived from trading activity, for which no penalty was imposed. Therefore, there is hardly any reason to treat this downsizing differently. ”*

12. We have carefully gone through the Assessment order, penalty order and the appellate order and considered the submissions of both the representatives. It comes up that in the assessment order the assessing officer has formed an opinion that on all the three counts the assessee has furnished inaccurate particulars of income and concealed his income therefore penalty proceedings under section 271(1)(c) of the Act should be initiated. These observations in the assessment order establish that the assessing officer had not given the specific finding as to which of the two limbs of section 271(1)(c) of the Act, the assessee has defaulted. As the penalty order is appreciated it comes up that in paragraph 5 of the penalty order the assessing officer has mentioned that he is imposing penalty as assessee has furnished inaccurate particulars of income. Ld. CIT(A) has taken into consideration the same in para-8.3 & 8.4 and observed as follows;

*“8.3 In the assessment order corresponding to this penalty order, also, the AO initiated penalty for furnishing inaccurate particulars of income, using identical wordings (in respect of all of the above said additions) to the ones used in the assessment order corresponding to the penalty order in the above adjudicated appeal). For example, the said wordings is reproduced as under:*

*"Accordingly, I am satisfied that the assessee has furnished inaccurate particulars of income and concealed his income, therefore, penalty proceedings u/s 271(1)(c) are initiated on the addition of Rs. 44,15,913/-".*

*8.4 In this case, also, the AO, finally imposed penalty for (deemed) concealment of particulars of Income, stating as under:*

*"7. Subject to above discussion, it is held that the assessee is squarely covered by the provision of Explanation 1 to clause(c) of section 271 (1) of IT Act."*

13. We are of considered view that the assessing officer while making a disallowance has merely considered the return of the assessee as filed and the financials. As assessee was confronted to different view and the assessee had immediately accepted the view of assessing officer and thereafter whatever demand was raised was immediately deposited in the care of 30 days. This shows that as claimed by the Ld.AR that assessee had made bona fide claims and being pointed out the mistakes had accepted the same and Ld. CIT(A) has given due consideration to the same. In no way a case of furnishing inaccurate particulars of income is made out as the assessing officer has merely examined the financials to point out the mistaken claims. The order of Ld. CIT(A) requires no interference.

14. In the result, the appeal of the Revenue for A.Y. 2014-15 is also dismissed.

**Order pronounced in the open court on 29.04.2024. .**

Sd/-

Sd/-

**(G.S.PANNU)**  
**VICE PRESIDENT**

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Date:- 29.04.2024

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Copy forwarded to:

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4. CIT(Appeals)
5. DR: ITAT

AR, ITAT  
New Delhi