

THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

I.T.A. No.4626/Mum/2023

(A.Y. 2011-12)

Chemtex Global Engineers Pvt. Ltd. Kailash Business Park C-1014, 1015 & 1016, 10 th Floor, C Wing, Veer Savarkar Road, Park Site, Vikroli West, Mumbai - 400079	Vs.	ACIT Circle – 15(1)(2), Mumbai Room No. 403, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020.
(Appellant)		(Respondent)
PAN NO. AACCC4458P		

Assessee by	Ms. Abha Gupta
Department by	Shri. Lieder Panicker – Sr. Dr.
Date of Hearing	06.05.2024
Date of Pronouncement	14.05.2024

ORDER

PER RENU JAUHRI :-

1. This appeal is preferred by the assessee against the order dated 27/10/2023 of National Faceless Appeal Center [NFAC] confirming penalty levied by the assessing officer[AO] u/s. 271(1)(c) of the Income Tax Act,1961.

2. The assessee has raised the following grounds of appeal :

“1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the levy of penalty u/s 271(1)(c) amounting to Rs. 1,94,330/- by the assessing officer on the addition made of Rs. 6,28,910/- in respect of computer software expenses. The appellant had not concealed any income nor furnished inaccurate particulars of any income and it was

disallowance only due to allowability of deduction of 100% versus 60% in current year.

2. On the facts and circumstances of the case and in law the learned CIT (A) erred in passing the order u/s 250 of the IT Act without considering the additional ground of appeal filed on 14.02.2023 which is as follow:-

"On the facts and in the circumstances of the case and in law the learned assessing officer erred in issuing a vague show cause notice without specifying the specific allegation as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings while interpreting the provisions contained u/s 271(1)(c) of the Act and hence order of penalty is not maintainable as held in various judicial pronouncements."

While passing the order the learned CIT (A) had not considered the same.

3. On the facts and circumstances of the case and in law the learned CIT (A) also erred in not considering submissions in respect to additional ground.

4. On the facts and circumstances of the case and in law the learned CIT (A) erred in confirming that there was default with in the meaning of section 271(1)(c). Though in fact there was no concealment.

3. The brief facts of the case are that the assessee had filed return of Income declaring loss of Rs.5,46,90,761/- on 23/09/2011. The assessment u/s. 143(3) of the Act was finalized at assessed loss of Rs. 4,81,99,685/- vide order dated 25/05/2015 after making addition on account of transfer pricing adjustment and disallowance of computer software expenses. Penalty u/s. 271(1)(c) was also initiated in respect of these additions/ disallowances.

4. Aggrieved with the order of the AO, the assessee filed an appeal before the Ld.CIT(A) who confirmed the addition made on account of disallowance of Computer Software Expenses to the extent Rs. 6,28,910/- only. Thereafter, the assessing officer imposed penalty of Rs. 1,94,330/- in respect of this amount vide order dated 08/03/2019 and the same was confirmed by the NFAC order dated 27/10/2023.

5. The Ld. AR has submitted that the levy of penalty related to partial disallowance of expenses incurred for renewal of software license which were claimed as revenue expenses but treated as capital in nature by the AO and Ld. CIT(A). The appellant had neither concealed any income nor furnished inaccurate particular of income. It was also pointed out that on same issue, the quantum addition made in the A.Y. 2010-11 has been deleted by Ld. CIT(A) and upheld by the co-ordinate bench of the ITAT in ITA No. 2529/Mum/2016 by observing as under:

“7. We have heard the rival submissions and also perused the material on record. The only grievance of the revenue is that the Ld. CIT(A) has wrongly treated the expenses of Rs. 1,00,52,982/- incurred for renewal of computer software license as revenue in nature. We notice that in the present case, the Ld. CIT (A) has decided the issue in favour of the assessee on the basis of the directions dated 31.03.2014 of the Ld. DRP in the assessee's own case for the A.Y. 2009-10 vide which the Ld. DRP has directed the AO to modify the draft assessment order and to treat the expenses in question as revenue in nature. The, operative part of the order of the Ld. CIT (A) reads as under:-

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8. We notice that the Ld. DRP has rectified the earlier findings on the identical issue and the AO has passed the assessment order in terms of direction dated 31.03.2014. In the present case, since the Ld. CIT (A) has decided the issue in favour of the assessee by following the directions of the Ld. DRP issued in the assessee's own appeal for the assessment year 2009-10 discussed above, we do not find any reason to interfere with the findings of the Ld. CIT (A). We accordingly, uphold the findings of the Ld. CIT (A) and dismissed the sole ground of the appeal of the revenue.”

6. The Ld. CIT(DR), on the other hand, relied on the orders of AO and Ld. CIT(A) and submitted that by claiming the expenditure on renewal of license as revenue expenditure, the assessee had furnished inaccurate particular of his income and as such the

penalty u/s. 271(1)(c) had been rightly imposed by the AO and upheld by the Ld.CIT(A).

7. We have considered the rival submissions. It is settled law that merely making a claim which is not sustainable, will not amount to furnishing of inaccurate particulars of income. In **CIT-2 v/s Larsen & Toubro Ltd. (2014) 48 taxmann.com 189 (Bom.)**, it has been held on similar facts that merely because the assessee raised a claim which was eventually disallowed did not mean that ingredients of clause (c) were satisfied so as to justify imposition of penalty.

8. In the present case, the issue of treating annual software renewal expenses as revenue expenditure has been decided in the A.Y. 2010-11 by the co-ordinate bench in favour of the assessee. In the year under consideration, the appellant has not filed appeal against the order of the Ld. CIT(A) in the quantum case. It is only in respect of the penalty imposed u/s 271(1)(c) of the Act, the appellant has contested the revenue's stand. Clearly, the issue under consideration has been a debatable one and it cannot be said that the assessee by making the claim has furnished inaccurate particulars of income. Accordingly, we delete the penalty imposed u/s 271(1)(c) of the Act.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.05.2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai;
Dated : 14/05/2024

POONAM MIRASHI
(STENOGRAPHER)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai