

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. AMARJIT SINGH, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1867/MUM/2024 (A.Y: 2009-10)**

Mahesh Vrajlal Babaria Vs. Income Tax Officer, Circle-
11/12, Nand Dham Building, Plot 23(1)
No. 270, Sion West, Mumbai – Piramal Chambers, Lalbaug,
400022. Mumbai – 400 012.

PAN: AEQPB4249C

(Appellant)

(Respondent)

Assessee Represented by : Ms. Dinkle Haria
Department Represented by : Shri. Ashok Kumar
Ambastha – Sr. AR
Date of conclusion of Hearing : 27.06.2024
Date of Pronouncement : 11.07.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 14.02.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2009-10, has been challenged on the grounds as culled out from memorandum of appeal/grounds of appeal: -



- a. *That the Ld. CIT(A) was erred in not granting proper, effective and fair opportunity of being heard while passing the appellate order, the order of the Ld. CIT(A) is therefore bad and illegal as the same is framed in breach of the statutory provisions and in accordance with law.*
 - b. *That the Ld. CIT(A) erred in confirming the action of the Ld. AO in levying penalty u/s. 271 (1)(c) of “the Act” because the order of the Ld. AO whereby penalty levied was bad and illegal as the necessary conditions for intimating the penalty proceedings and the completion thereof were not fulfilled.*
 - c. *That the Ld. CIT(A) has failed to appreciate that the penalty levied was bad and illegal as the no satisfaction was recorded by the A.O. with respect to the exact charge for initiating the penalty proceedings.*
 - d. *That the Ld. CIT(A) erred in confirming the action of the Ld. AO in levying penalty of Rs. 2,63,250/- u/s. 271 (1)(c) of “the Act” on the allegation of furnishing of inaccurate particulars of income by the appellant.*
 - e. *That the Ld. CIT(A) has failed to appreciate that the penalty cannot be levied as the disallowance made u/s. 14A of “the Act” by the Ld. AO in the assessment order was on estimation basis only.*
2. The brief facts as culled out from the proceedings before these lower authorities are that the assessee has filed return of income for A.Y. 2009-10 on 29.09.2009 declaring total income at Rs. 1,04,15,780/- and claiming exempt income at Rs. 24,09,769/-. The Assessment order u/s. 143(3) of “the Act” was passed on 30.12.2011 determining the total income of the assessee was Rs. 2,01,97,980/-.
 3. Aggrieved by the addition made by the assessing officer, the assessee before the Ld. CIT(A) who vide order dated 27.12.2012 dismissed the appeal of the assessee before the Ld. CIT(A) and upheld the order of



Assessing Officer. The assessee preferred appeal before the Hon'ble ITAT, wherein the vide order dated 14.07.2017 set aside the order of the Ld. CIT(A) and restored the matter to file of the Ld. AO with specific directions to the Ld. AO that before the finalization of the assessment, the Ld. AO will provide proper opportunity to the assessee to file necessary documents and accounts etc. including the fund flow statement, if any as per law.

4. Accordingly, the assessee was granted an opportunity as per the directions of the Hon'ble ITAT to explain with sufficient evidence to show as to how his case does not attract the provisions of the Section 14A r.w.r 8D. Accordingly, the assessee submitted the fund flow statement for the year under consideration alongwith details of investment made and in the proceedings before the Ld. AO, it was noticed that the assessee has earned exempt income; the assessee maintaining the separate books of accounts for all his proprietorship concerns wherein the expenditures are debited separately; the fund flow statement indicates that the investments have been made from own capital and same is reflected in the personal balance sheet; the interest payments are made to finance company for the purchase of trucks etc. which were used for business of the assessee; direct expenditure for earning exempt income has been debited to his personal accounts.
5. It was concluded by the Ld. AO that the assessee has sufficient own funds for investment, therefore, the interest expenditure was not available for working of disallowance within the meaning of provisions of Section 14A r.w.r. 8D. However, it was further concluded that the assessee has not



been able to deny that the administration expenses or indirect common expenses include the amount spent in relation to earn exempt income, therefore Rule 8D(1)(b) was applicable in case of assessee. Accordingly, the disallowance u/s. 14A r.w.r. 8D was worked out at Rs. 7,74,486/- and the same was added to the total income of the assessee and the assessment order u/s. 143(3) of “the Act” was passed determining the total income of the assessee at Rs. 1,11,90,270/-.

6. The penalty proceedings u/s. 271(1)(c) of “the Act” were also initiated on 14.12.2018 for concealment of income/furnishing inaccurate particulars of income. The assessee in response to the penalty show cause notice has clarified that the penalty is not attracted on estimated addition; that the assessee had kept separate person for shares accounting etc and same was submitted at the time of hearing but due to the expensive litigation the assessee has not been able to challenge the quantum of additions in appeal.
7. After considering the submissions of the assessee with respect to the penalty proceedings, it was observed by the Ld. AO that addition is on account of disallowance of administrative expenses/indirect common expenses incurred in relation to earn exempt income and it was not a case of addition on estimate basis.
8. The assessee has not made any disallowance u/s. 14A in respect of income nor did computation of total income for administrative expenses/ indirect common expense incurred in relation to earn exempt income. It was therefore concluded by the Ld. AO that the assessee has furnished inaccurate particulars of income to the extent of Rs. 7,74,486/- and



accordingly the minimum penalty @100% of the tax sought to be evaded is Rs. 2,63,250/- and maximum penalty @300% is Rs. 7,89,750/. After obtaining the necessary administrative approval from the Jt. Commissioner of Income Tax, a sum of Rs. 2,63,250/- was imposed as penalty. The said order was challenged in appeal before the Ld. CIT(A) who has confirmed the penalty order passed by the Ld. AO. Hence, the assessee is in appeal before this Tribunal.

9. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue.
10. What is required for the AO to proceed u/s. 271(c) against the assessee is as under:
 - a. There has to be concealment of the particulars of assessee's income or;
 - b. The assessee has furnished inaccurate particulars of such income.
11. The Ld. AO has proceeded to impose penalty on the ground that the assessee had not been able to deny that the administrative expenses or indirect common expenses include amount spent in relation to earn exempt income. However, the submissions of the assessee were accepted to the effect that the assessee has sufficient own funds for investment and interest expenditure was not available for working of the disallowance within the meanings of provisions of Section 14A r.w.r. 8D. Therefore, the penalty has been imposed because the assessee has neither made any disallowance u/s. 14A nor computation of income for administrative



expenses/indirect common expenses incurred in relation to earn exempt income.

12. What is concealment of income or inaccurate particulars of such income as contemplated by Section 271(1)(c), has been explained by the Hon'ble Supreme Court in the case of the *CIT Vs. Reliance Petro Products (P.) Ltd.* as reported in 322 ITR 158 wherein it has been held as under: -

"A glance at the provision of s. 271(1)(c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the s. 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Therefore, it is obvious that it must be shown that the conditions under s. 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income."

13. We have examined the case of the assessee in view of the observation of the Hon'ble Supreme Court in the above case. It is to be noticed that the assessee is maintaining the separate books of accounts for all his



proprietorship concerns where the expenditures are debited separately; the fund flow statement indicates that the investments have been made from own capital and same is reflected in the personal balance sheet; Interest payments are made to finance company for the purchase of trucks etc. which were used for business of the assessee; direct expenditure for earning exempt income has been debited to his personal accounts. Above submissions and the explanation given by the assessee is an admitted fact as find recorded in the order of the Ld. AO. Thus, admittedly no information in the return was found to be incorrect or inaccurate. Further, statement made or any detail supplied was not found to be factually incorrect. Thus, the fact and circumstances of the case is covered by the ratio of Hon'ble Supreme Court judgment in CIT Vs. Reliance Petro Products (P.) Ltd. referred (supra). Further, the facts and circumstances are also covered by the case of ITAT Delhi in *M/s. Mohair Investment and Trading Company (P.) Ltd. v. DCIT (ITAT Delhi)*, Income-tax (Appeal) no. 4677 of 2009, Date of Judgment: 27.11.2015 where it was held that it is clear that the present issue, related to application of section 14A, especially in relation to shares held as trading assets, was clearly debatable and so it cannot be visited with penalty under section 271 (1)(c). Further we find that the assessee has furnished all the details relating to the earning of dividend income. So, it cannot be said that the assessee had concealed income or furnished incorrect particulars of income. Hence, penalty u/s 271 (1) (C) is not sustainable.

14. For the above reasons, we are of the considered opinion that the revenue has failed to show that the assessee has concealed the particulars of income or has furnished the incurred particulars of such income and the



case of the assessee is not covered u/s. 271(1)(c) of "the Act". For these reasons, we delete the penalty imposed in this case and confirmed by the impugned order. The grounds of appeal are decided in favour of the assessee.

15. In the result, the appeal is accordingly allowed in the above terms.

Order pronounced in the open court on 11.07.2024

Sd/-
(AMARJIT SINGH)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 11.07.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai