

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 479/MUM/2024
(Assessment Year: 2011-12)**

**Deputy Commissioner of Income Tax
-13(1)(2), Mumbai**

Room No. 218, 2nd Floor, Aayakar Bhavan,
M K Road, Mumbai - 400020

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Appellant

**Pratham Telecom India Pvt. Ltd.,
Mumbai,**

1201, Dhruv (Shyam Baba House),
Uper Govind Nagar, Malad (East),
Mumbai - 400097

[PAN: AADCP8441Q]

Vs

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Respondent

Appearance

For the Appellant/Department

: Shri H.M. Bhatt

For the Respondent/Assessee

: Shri Parikshit Agarwal

Date

Conclusion of hearing

: 27.05.2024

Pronouncement of order

: 31.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 06/12/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Penalty Order, dated 22/03/2017, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

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

1. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty u/s.271(1)(c) of the Act of Rs.71,92,428/-?*
2. *Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 on the ground that the total income declared in ITR by the assessee is a loss figure?*
3. *Whether on the facts and the circumstances the Ld.CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the Act by relying on the Apex Court judgment in the case of Visual Soft Systems Limited (280 ITR-83) ignoring that the said judgment had been overruled by subsequent judgment of the Hon'ble Supreme Court in CIT v. Gold Coin Health and Food Private Limited, (2008) 304 ITR 308?"*
4. *Whether on the facts and the circumstances the Ld.CIT(A) has erred in ignoring the ratio laid down by the judgment of the Hon'ble Supreme Court in CIT v. Gold Coin Health and Food Private Limited, (2008) 304 ITR 308 that Explanation 4 to Section 271(1)(c) of the Act (as amended by the Finance Act, 2002 w.e.f. 01.04.2003 and Finance Act, 2007 w.e.f. 01.04.2003) is clarifactory and intended to levy the penalty not only in a case where, after addition of concealed income, a loss returned, after assessment becomes positive income but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or a minus figure.?*
5. *Whether on the facts and the circumstances the Ld. CIT(A) has erred in deleting the penalty of Rs.71,92,428/- ignoring the provisions of Explanation 4 to Section 271(1)(c) of the Act (clarified by the Hon'ble Supreme Court in the case of CIT v Gold Coin Health and Food Private Limited cited Supra) applicable to the Assessment Year 2011-12 under consideration?*
6. *Whether on the facts and the circumstances the Ld.CIT(A) has erred in deleting of penalty u/s.271(1)(c) of the Act by relying on the Apex Court decision in the case of Prithipal*

Singh & Co. in (2001) 249 ITR 670 (SC) (supra), which was rendered in the provision existed before 1975. Hence, it is not applicable to the period after 1st April, 1976?"

7. *The appellant prays that the order of the Ld.CIT(A)-NFAC, Delhi on the grounds be set aside and confirm the order of the AO.*
8. *The appellant craves leave to add, amend or alter all or any of the grounds of appeal."*

3. The relevant facts in brief are that the Assessee is a private limited company engaged in the business of trading and distribution of mobile handsets. The Assessee filed return of income for the Assessment Year 2011-12 on 30/09/2011 declaring loss of INR 6,45,162/-. The Assessment was completed under Section 143(3) of the Act on 24/03/2014 making addition of INR 2,57,88,258/- under Section 41(1) of the Act on account of alleged cessation of various sundry creditors outstanding as on 31/03/2011. Being aggrieved, the Assessee preferred appeal before the Ld. CIT(A). It was the contention of the Assessee that all the creditors were genuine and had been duly verified in assessment proceedings for the earlier assessment years. The CIT(A) vide order, dated 16/12/2016, granted partial relief to the extent of INR 41,35,731/-. While giving effect to the aforesaid order passed by the CIT(A), the Assessing Officer computed total income of the Assessee at 'Nil' after providing adjustment of brought forward losses from the earlier assessment years.
4. Meanwhile, penalty proceedings were initiated against the Assessee under Section 271(1)(c) of the Act which culminated into penalty order, dated 22/03/2017, imposing penalty of INR 71,92,428/- under Section 271(1)(c) of the Act. Being aggrieved the Assessee preferred appeal before the CIT(A) against the

above penalty order. Vide order, dated 06/12/2023, the Ld. CIT(A) deleted the penalty levied under Section 271(1)(c) of the Act. Being aggrieved the Revenue has preferred the present appeal before the Tribunal on the grounds reproduce on paragraph 2 above.

5. We have given thoughtful consideration to the rival submission and perused the material on record.
6. We note that the CIT(A), while granting relief to the appellant while deleting the penalty has observed as under:

"3.1 From the impugned order it is seen that the details were on record but there was a difference of opinion between the appellant and the Assessing Officer (AO) regarding the transactions concerning creditors and with respect to advance received. Most of the additions made were sustained by the Id. CIT(A).

3.2 Essentially, it boils down to a matter of cessation of liability and whether these amounts should be taken as the Income of the appellant for the relevant financial year. It is not the case of the Assessing Officer (AO) that these details- the existence of sundry creditors had been hidden - they were part of the assessment record and are duly reflected in the accounts of the appellant and have been carried forward from previous years. That some of the creditors could not be produced/did not respond to the notices was held to be a sign of non-genuineness by the Assessing Officer.

3.3 It is the argument of the appellant that due to the losses incurred over the years, it was not able to repay these outstanding creditors and that there was no question of paying them outside the books of accounts.

3.4 The term "furnishing inaccurate particulars of income" implies furnishing of details or information about the income which are not in conformity with the facts or truth. This cannot be extended to an area which is subjective such as status of taxability of income, admissibility of deduction and interpretation of law. The admission or rejection of a claim subject to exercise and whether the claim is accepted or rejected has nothing to do with furnishing of inaccurate

particulars of income. Raising a legal claim, even if it is ultimately found to be legally unacceptable cannot amount to furnishing of inaccurate particulars of income. In this case, the assessee has made a bona fide legal claim, which was not accepted by the AO. However, it does not mean that the assessee has furnished inaccurate particulars of income.

3.5 XX

3.6 XX

3.7 *The additions were made only on account of divergent views taken regarding the material on record. It is, therefore, far-fetched to conclude that the appellant was guilty of furnishing inaccurate particulars, even if the creditors did not respond to the notices. The case laws relied upon by the appellant also lend credence to this point of view. In view of the foregoing, the grounds are allowed, and the AO is directed to delete the penalty.*

3.8 *Since the issue regarding the penalty has been decided in the foregoing paragraphs, the other grounds are rendered academic and are therefore not being adjudicated upon."*

7. On perusal of the orders passed by the authorities below, we concurred with the above finding the return by the CIT(A). All the facts relevant to the assessment were placed before the Assessing Officer during the assessment proceedings. We note that in the present case addition was made by the Assessing Officer on the grounds that there was cessation of liability. As rightly observed by the CIT(A) there was difference of opinion between Assessee and Assessing Officer on same set of fact and therefore, it cannot be said that the Assessee was guilty of furnishing inaccurate particular of income. Further, we note that in the appellate proceedings before the CIT(A), it was contended on behalf of the Assessee that the penalty proceedings could not be sustained as the notice issued under Section 271(1)(c) read with Section 274 of the Act was defective. In this regard we note that the in the assessment order, dated 24/03/2014, the penalty

was stated to have been initiated for "*furnishing inaccurate particulars which leads to concealment*". Whereas in the notice issued under Section 274 of the Act, it has been stated as follows – "*You are requested to show caused why the penalty under section 271(1)(c) should not be levied on you for concealment of particulars of income or furnishing inaccurate particulars of such income*". Clearly, the penalty notice has been issued without deleting or striking off inapplicable part. The full Bench of the Hon'ble Bombay High Court in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) has held that a mere defect in the notice - not striking off the irrelevant matter, would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

"Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the Appellant. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the Appellant must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness." (Emphasis supplied)

8. Thus, the statutory notice issued to the Appellant does not inform the Appellant about the charge against the Appellant – whether penalty under Section 271(1)(c) of the Act is sought to be levied for concealment of particulars of income or furnishing

inaccurate particulars of income. On this count as well, the penalty levied by the Assessing Officer cannot be sustained. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A). Ground No.1, 2 and 6 are dismissed as being without merit while Ground No. 3 to 6 are dismissed as being misconceived. Ground No. 7 is dismissed as being general in nature.

9. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 31.07.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.07.2024
Poonam mirashi,
Stenographer

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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