

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE
BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

**ITA No.1145/PUN/2024
Assessment Year : 2014-15**

Paranjape Pendse Associates C/o Pendse Associates, Commerce Centre, Opp Krishna Hospital, Paud Road, Pune – 411038	Vs.	DCIT, Circle – 3, Pune
PAN : AAGFP2301M		
(Appellant)		(Respondent)

Assessee by : Shri Suhas Bora
Department by : Shri Arvind Desai, Addl CIT, DR
Date of hearing : 09-09-2024
Date of pronouncement : 10-09-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 30.04.2024 of the CIT(A) / NFAC relating to assessment year 2014-15.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT(A) / NFAC in confirming the levy of penalty of Rs.57,69,152/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of builders and developers. It filed its return of income on 26.11.2014 declaring total income of Rs.22,54,389/-. The case was selected for

scrutiny under CASS and statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. However, there was non-compliance from the side of the assessee, for which the Assessing Officer completed the assessment u/s 144 r.w.s. 143(3) of the Act on 20.12.2016 determining the total income of the assessee at Rs.1,90,22,532/-, where he made the following additions:

- a) *Rs.25,49,468/- being adhoc disallowance of 20% of total expenses debited at Rs.1,27,47,339/-*
- b) *Rs.58,98,675/- being disallowance of 20% of unsecured loans of Rs.2,94,93,272/-*
- c) *Rs.83,20,000/- being addition on account of sale of immovable property -*

4. In appeal, the CIT(A) vide order dated 27.03.2019 deleted the addition of Rs.58,98,675/- and Rs.83,20,000/-, respectively as per item Nos.2 and 3 above. So far as the disallowance of 20% of the expenses is concerned, the CIT(A) sustained the addition of Rs.2,50,000/- on lump sum and deleted the balance amount of Rs.22,99,468/-. In the meantime, the Assessing Officer had issued the penalty notice u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee, the Assessing Officer levied penalty of Rs.57,69,152/-.

5. In appeal, the CIT(A) / NFAC dismissed the appeal filed by the assessee.

6. Aggrieved with such order of the CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset submitted that out of the total addition of Rs.1,67,68,143/-, the CIT(A) / NFAC has already deleted an amount of Rs.1,65,18,143/- and sustained only an amount of Rs.2,50,000/- out of the adhoc disallowance of 20% of the expenses, the details of which are as under:

Details of Addition made by AO, relief granted by CIT(A) and addition confirmed by CIT(A) against the order u/s 144 r.w.s. 143(3) of the Act.

Sr. No.	Particulars	Addition made by AO (Rs)	Reference	Addition deleted by CIT(A) (Rs)	Reference	Addition confirmed by CIT(A) (Rs)	Reference
1	Addition on account of 20% of total expenses	2549468	Para 4 on page no.2 of Assessment Order	2299468	Para 6.3.2 on page no.8 and 9 of CIT(A) Order	250000	Para 6.3.2 on page no.8 and 9 of CIT(A) Order
2	Addition on account of 20% of Unsecured loan	5898675	Para 5 on page no.3 of Assessment Order	5898675	Para 7.3.2 on page no.11 of CIT(A) Order	-	
3	Addition on account of sale of immovable property not declared in ROI	8320000	Para 6 on page no.3 of Assessment Order	8320000	Para 8.3.4 on page no.15 of CIT(A) Order	-	
	Total	1,67,68,143		1,65,18,143		2,50,000	

8. Relying on various decisions, he submitted that the levy of penalty u/s 271(1)(c) of the Act on account of adhoc disallowance is not in accordance with law and therefore, the same should be deleted.

9. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the CIT(A) / NFAC.

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We find the Assessing Officer in the order passed u/s 144 r.w.s. 143(3) of the Act made disallowance of Rs.1,67,68,143/- out of which the CIT(A) / NFAC deleted an amount of Rs.1,65,18,143/- and sustained an amount of Rs.2,50,000/- only out of the adhoc disallowance of expenses @ 20%, details of which are given at para 7 of this order. We find the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC) has held that mere making of a claim which is not sustainable in law by itself, will not attract penalty under the section when the assessee has furnished all the particulars of income, which are not found to be inaccurate. It is up to the authorities to accept the claim of the assessee or not, but that cannot call for imposition of penalty. There are umpteen number of decisions in which it has been held that no concealment penalty can be imposed for disallowance of expenses on estimate basis. Such decisions include CIT vs. Ajaib Singh and Co. (2002) 253 ITR 630 (P&H); Naranbhai Veerabhai and Co. vs. CIT (1993) 203 ITR 1017 (Guj) and Addl. CIT vs. Delhi Cloth and General Mills Co. Ltd. (1986) 157 ITR 822 (Del). Since the major amount has already been deleted by the CIT(A) / NFAC and the only addition is an estimated lump sum addition of Rs.2,50,000/- out of total expenses of Rs.1,27,47,339/- debited in the Profit and Loss Account, therefore, we are of the considered opinion that penalty u/s 271(1)(c) of the Act is not leviable in the instant case. We, therefore, set aside the order of the Ld

CIT(A)/NFAC and direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act. The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the open Court on 10th September, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 10th September, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	09.09.2024		Sr. PS/PS
2	Draft placed before author	10.09.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			