

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ, चण्डीगढ  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER  
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA No. 8/CHD/2020**

निर्धारण वर्ष / Assessment Year: 2012-13

M/s Himachal Fashion Pvt. Ltd., 'Formerly M/s Candex Chemicals Fibres Co. Ltd', 851, Industrial Area-A, Ludhiana	Vs. बनाम	The ITO, Ward 6(3), Aaykar Bhawan, Rishi Nagar, Ludhiana
स्थायी लेखा सं./PAN No: AADCC2296C		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

( PHYSICAL HEARING )

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CA  
& Shri Aditya Kumar, CA

राजस्व की ओर से/ Revenue by : Shri Danish Abdullah, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 27.08.2024

उदघोषणा की तारीख/Date of Pronouncement : 10.09.2024

**आदेश/Order**

**Per Dr. Krinwant Sahay, A.M.:**

Appeal in this case has been filed by the Assessee against the order dated 30.10.2019 of the ld. Commissioner of Income Tax (Appeals)-3, Ludhiana [herein referred to as 'CIT(A)'].

2. Grounds of appeal are as under: -

1. *That on the facts and the circumstances of the case, the Order of Learned CIT(A) is bad in law.*
2. *That the Learned Commissioner of Income Tax (Appeals) has erred in sustaining the Penalty of Rs. 23,22,790/- under Section 271(1)(c) of the Income Tax Act, 1961 by holding that the Assessee had filed inaccurate particulars of Income.*
3. *That the Learned Commissioner of Income Tax (Appeals) has erred in ignoring the fact that the Penalty Proceedings were initiated without application of mind and that the whole proceedings were bad in law.*
4. *That the Learned Commissioner of Income Tax (Appeals) has erred in ignoring the fact that the above said Penalty Order was passed without giving the proper opportunity of being heard.*
5. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. In the afore-mentioned grounds of appeal, the only issue involved is against the imposition of penalty u/s Section 271 (1) (c) of the Income Tax Act, 1961 (in short 'the Act') for filing of inaccurate particulars because of filing of a belated return of income.

4. Brief facts of the case, as mentioned in the penalty order, are as under:

“2.....that while completing the assessment, it was noticed that the assessee company claimed deduction of Rs.75,17,116/- under section 80-IC of the Income-tax Act, 1961. The assessee was required to file its return of income for the assessment year 2012-13 on or before 30.09.2012 as stipulated under section 80AC of the Income-tax Act, 1961 being the due date under section 139(1) of the Income-tax Act, 1961.

3. An opportunity was given to assessee company vide this office letter dated 16.03.2015 to show cause why the deduction u/s. 80-IC of Rs.75,17,116/- should not be disallowed and added to the income for the A.Y. 2012-13. In response to the counsel of the assessee vide his letter dated 17.03.2015 contended that the filing of return for the A.Y. 2012-13 was out of mind of the assessee because different counsels for audit work and for filing of return were appointed by him. The A.O. was not satisfied with the contention of the assessee and the deduction claimed of Rs. 75,17,116/- was disallowed and added to the taxable income.

The contention of the counsel of the assessee company is not tenable as section 80AC of the I.T. Act has made it mandatory to file the return on or before

the time allowed u/s.139(1). Therefore, addition of Rs. 75,17,116/- was made on account of disallowance claimed by the assessee. Simultaneously, penalty proceedings under section 271(l)(c) of I. T. Act, 1961 were initiated for furnishing inaccurate particulars of income.

5. During the penalty proceedings, the Assessee submitted that since the return of income was a belated return, so this may be a reason to disallow the claim of considered u/s 80IC of the Act but it cannot be considered as filing of inaccurate particulars but the Assessing Officer did not accept this argument and levied penalty u/s Section 271 (1) (c) of the Act.

6. Aggrieved with the order of the Assessing Officer, the Assessee preferred an appeal before the ld. CIT(A), Ludhiana. The same arguments were taken but the ld. CIT(A) did not accept the submissions of the Assessee and confirmed the penalty imposed by the Assessing Officer u/s Section 271 (1) (c) of the Act.

7. Aggrieved with the order of the ld. CIT(A), the Assessee has preferred this appeal before the Tribunal.

8. In the proceedings before us, the ld. Counsel of the Assessee has submitted that because of a belated return, it may be a case of disallowance of the claim made u/s 80 IC but it can never be a case of filing of inaccurate particulars by the Assessee in order to attract imposition of penalty u/s Section 271 (1) (c) of the Act. The ld. Counsel also submitted a case laws, i.e., 'CIT Ahmedabad vs. Reliance Petroproducts (P.) Ltd' [2010], 189 Taxman 322 (SC) in which the Hon'ble Supreme Court has held as under: -

*“A glance of provision of section 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. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. 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 of inaccurate particulars.”*

9. The ld. Counsel of the Assessee has furnished another case law in ‘Price Water House Coppers (P) Ltd. vs. CIT & Anr’, [2012] 348 ITR 306 (SC) wherein, the Hon'ble Supreme Court held as under: -

*“Penalty under s. 271(1)(c)—Concealment—Bona fide mistake of claiming inadmissible deduction—Even though the statement of particulars in Form No. 3CD indicated that the provision towards payment of gratuity was not allowable, assessee claimed deduction thereon in its return—Tribunal as well as the High Court have acknowledged the fact that this was a "silly mistake" on the part of the assessee—Fact that the tax audit report was filed along with the return and that it unequivocally stated that the provision for payment of gratuity was not allowable as deduction under s. 40A (7) indicates that the assessee made a computational error in its return — Contents of the tax audit report suggest that there was no question of concealment of income or furnishing of inaccurate particulars by the assessee —All that has happened is that the assessee failed to add back the provision for gratuity to its total income on account of a bona fide and inadvertent error— Calibre and expertise of the assessee, a worldwide reputed management consultant, has nothing to do with this inadvertent error—Therefore, imposition of penalty is not justified”.*

10. The ld. DR relied on the order of the ld. CIT(A).

11. We have considered the findings of the Assessing Officer in the penalty order and the order passed by the CIT(A) in the appeal order.

12. We have also considered the argument made by the Counsel of the Assessee and arguments made by the ld. DR during the proceedings before us. We find that in the case of a belated return there may be justification for not allowing the claim of deduction made u/s 80IC of the Act but it does not mean that even if the return of income is a belated one, the claim made in the return of income tantamount to filing of inaccurate particulars. The ratio decided by the Hon'ble Supreme Court in the case of 'CIT Ahmedabad vs. Reliance Petroproducts (P.) Ltd' (supra) and 'Price Water House Coppers (P) Ltd. vs. CIT & Anr' (supra) is very clear on this issue. In fact, in order to impose penalty u/s Section 271 (1) (c) of the Act, the Revenue has to bring it on record either the concealment of particulars of income filed by the Assessee in the ITR or the Revenue has to pin-point inaccurate particulars filed by the Assessee or inaccurate particulars regarding any claim of deduction filed by the Assessee in its ITR. In this case there is nothing as such found by the authorities below. The claim of deduction u/s 80IC of the Act has been denied not because of filing of any inaccurate particulars but

because of filing of a belated return of income. Therefore, a case of filing of belated return of income may not be considered as a reason for imposing penalty u/s Section 271 (1) (c) of the Act. Accordingly, the order passed by the authorities below cannot be sustained. Thus, appeal of the Revenue on this ground is allowed.

13. In the result, the appeal of the Assessee is allowed.

Order pronounced on 10.09.2024.

**Sd/-**  
**(PARESH M. JOSHI)**  
**Judicial Member**

**Sd/-**  
**(DR KRINWANT SAHAY)**  
**Accountant Member**

“rkk”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar