

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)  
AND  
SMT.RENU JAUHRI (ACCOUNTANT MEMBER)  
I.T.A. No.1488/Mum/2016  
(Assessment year 2007-08)**

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| <b>DCIT 3(2)(1), Mumbai<br/>6<sup>th</sup> Floor, Aayakar Bhavan<br/>M.K. Road, Mumbai-400 020</b> | vs | <b>LML Ltd, 714, Raheja<br/>Chambers<br/>213, Nariman Point<br/>Mumbai-400 020<br/>PAN : AAACLO141N</b> |
| <b>APPELLANT</b>   |    | <b>RESPONDENT</b>   |

|                           |                              |
|---------------------------|------------------------------|
| Assessee represented by   | None                         |
| Department represented by | Shri Paresh Deshpande, SR AR |

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| Date of hearing       | 07-10-2024 |
| Date of pronouncement | 14-10-2024 |

**O R D E R**

**PER : BEENA PILLAI (JM)**

Present penalty appeal filed by the revenue arises out of order dated 30/12/2019 passed by the Ld.CIT(A)-8, Mumbai for Assessment Year 2007-08 on following grounds of appeal:-

*"1. Whether on the facts and circumstances and in law the Ld.CIT(A) was right in deleting penalty levied u/s. 271(1)(c) of Rs. 2,22,24891/ holding that the assessee had not filed inaccurate particulars of income without appreciating the fact that the assessee had not offered Short Term Capital Gain u/s. 50 of the Act on sale of depreciable fixed asset as its income in return of income or during the scrutiny proceedings. ?"*

*"2. Whether on the facts and circumstances and in law the Ld.CIT(A) was right in deleting penalty levied u/s. 271(1)(c) of Rs. 2,22,24891/ without appreciating the fact that the assessee offered*

*income under the head STC Gain only after the AO issued specific show and not prior to that and the explanation submitted by the assessee was neither correct nor bonafide as the final accounts of the assessee were subject to tax Audit u/s. 44AB.?"*

*"3. Whether on the facts and circumstances and in law the Ld.CIT(A) was right in deleting penalty levied u/s. 271(1)(c) of Rs. 2,22,24891/- without appreciating the fact that the explanation submitted by assessee was neither correct nor bonafide as the final accounts of the assessee were subject Tax Audit u/s. 44AB.?"*

*"4. Whether on the facts and circumstances and in law the Ld.CIT(A) was right in deleting penalty levied u/s. 271(1)(c) of Rs. 2,22,24891/- without following the decision of the Hon'ble Delhi High Court, passed after considering the decision of Hon'ble Supreme Court in M/s. Reliance Petroproducts Ltd., in the case of M/s. Zoom Communications Ltd. wherein the Hon'ble Court held that penalty u/s. 271(1)(c) is leviable when the explanation filed by assessee is not correct and/or not bonafide.?"*

*5. "The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

*6. "The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

### **Brief facts of the case are as under:-**

**2.1.** The assessee has filed its return of income on 30/10/2007 declaring loss of Rs.47,19,66,427/-. An assessment under section 143(3) of the Act was completed on 12/12/2009 determining total loss of Rs.35,33,07,050/-. It is observed from the assessment record that the Ld.AO disallowed short term capital gains claimed by the assessee to Rs.7,29,18,297/-.

**2.2.** The Ld.CIT(A) recorded the reasons that led to the disallowance by the Ld.AO. It is observed that the Assessing Officer denied the claim of assessee, since the fixed assets being the land and building that was sold, was neither included in the return of income nor

included in the computation of income. The Ld.AO in the assessment order, initiated penalty proceedings under section 271(1)(c) for concealing the particulars of income. During the quantum proceedings before the Ld.CIT(A), the assessee withdrew the ground of the claim pertaining to the short term capital gain.

**2.3.** The Ld.AO, thus vide notice dated 28/03/2014 proposed to levy penalty under section 271(1)(c) of the Act. In response to the showcause notice, the assessee responded vide its letter dated 07/03/2014. The Ld.AO, after considering the submissions of the assessee levied the penalty @100% of the tax sought to be evaded by observing that the assessee had withdrawn the claim and accepted the addition made by the Ld.AO. The Ld.AO in the penalty order also noted that penalty being a civil offence is the consequential liability. In support he relied on the decision of *Hon'ble Supreme Court* in case of *UOI vs Dharmendra Textiles Processors* reported in (2008) 306 ITR 277.

Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

**2.4.** The Ld.CIT(A) noted that the assessee made a claim which was not sustainable in the eye of law and accordingly, withdrew the claim in the quantum proceedings. The Ld.CIT(A) further noted that all the relevant details required to verify the claim of the assessee

were available on record and, therefore, it was not a case for concealment. He placed reliance on the decision of the *Hon'ble Bombay High Court* in the case of *DIT vs Administrator of Estate of late Mr. E.F. Dinshaw* reported in *218 Taxman 125* and *CIT vs M/s Aditya Birla Nova Limited* in ITA No.3899 of 2010. Based on the ratios laid down in the above decisions, Ld.CIT(A) deleted the penalty by holding that it is not a fit case to fall under the category of concealment.

Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this *Tribunal*.

**2.5.** At the outset, the Ld.DR submitted that, the assessee has gone into liquidation and drew our attention to the application by the Liquidator on behalf of the assessee praying to dispose of the legal proceedings against the present assessee vide letter dated 23/11/2018. It is also noted that none was present on behalf of the assessee. Considering the totality of the facts and taking into account the observations of the Ld.CIT(A), rejected any concealment in the case of the assessee, having regards to the records.

**2.5.** As evident from the aforesaid cl.(c) of s.271(1) of the Act, the words used are “has concealed the particulars of his income;; or, “furnished inaccurate particulars of such income”;. In both situation of concealment and inaccuracy, the legislature has used

phrase, “particulars of income”. The legislature has not used the words; “concealed his income”. This is the reason why various *Hon’ble High Courts and Hon’ble Supreme Court* held that, the penal provision would operate when there is a failure to disclose fully or truly all the material particulars of income which lead to the correct computation of income in accordance with the provisions of the Act. So when any fact material to the determination of an item as income or material to the correct computation is not filed or that which is filed is not accurate, then the assessee would be liable to penalty under s. 271(1)(c) of the Act. The expression, “has concealed the particulars of income” and “has furnished inaccurate particulars of income” have not been defined either in section 271 or elsewhere in the Act.

**2.6.** However, notwithstanding the difference in the two circumstances, it is now well established that they lead to the same effect namely, keeping off a certain portion of the income from the return. According to Law Lexicon, the word “conceal” means:

*“to hide or keep secret. The word ‘conceal’ is con+celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income-tax authorities.”*

**2.7.** If the disclosure of facts is incorrect or false to the knowledge of the assessee, and this fact is established, then such disclosure cannot take such assessee out from the purview of the act of

concealment of particulars or furnishing inaccurate particulars for the purpose of levy of penalty. The penalty u/s 271(1)(c) of the Act is leviable if the AO is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of such income.

**2.8.** It is noted that the Ld.AO placed reliance on the decision of *Hon'ble Supreme Court in case of UOI vs Dharmendra Textile Processors (supra)* that dealt with the concept of *mens rea* in order to impose penalty for a breach of civil obligation and is not applicable to the present facts of the case.

**2.9.** In our opinion, there is no case of concealment made out by the revenue, as all the necessary facts were available on record and the disallowance of the claim admitted to be withdrawn by the assessee in the quantum proceedings is due to a wrong claim made. Under such circumstances, we do not find any infirmity in the view taken by the Ld.CIT(A) and the same is upheld.

**Accordingly, the grounds raised by the revenue stand dismissed.**

**In the result, the appeal filed by the revenue stands dismissed.**

**Order pronounced in the open court on 14/10/2024.**

**Sd/-**

**Sd/-**

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|---------------------------|----------------------------|
| <b>(SMT. RENU JAUHRI)</b> | <b>(SMT. BEENA PILLAI)</b> |
| <b>ACCOUNTANT MEMBER</b>  | <b>JUDICIAL MEMBER</b>     |

Place: Mumbai,

Dt : 14<sup>th</sup> October, 2024

Pavanan