

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5182/MUM/2024
Assessment Year: 2016-17**

NESCO Ltd., Nesco Complex, Western Express Highway, Goregoan East highway, Garegoan East, Mumbai – 400063 (PAN : AAACN1222E)	Vs.	Assistant Commissioner of Income Tax, Circle – 13(1)(1) Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Satish R. Mody, Advocate
Revenue : Shri Preetam Kumar Turerao, Sr. AR

Date of Hearing : 14.11.2024
Date of Pronouncement : 26.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1067768680(1), dated 20.08.2024 passed against the penalty order by Assessing Officer, National Faceless Assessment Centre, Delhi, u/s. 271(1)(c) of the Income-tax Act (hereinafter referred to as the “Act”), dated 29.03.2022 for Assessment Year 2016-17.

2. The sole ground raised by the assessee is in respect of imposition of penalty of Rs.4,08,100/- u/s. 271(1)(c) of the Act. The amount mentioned in the ground of appeal is Rs.11,79,221/- which in fact is the addition made in the hands of the assessee on which the penalty is imposed, hence correction noted.

3. Brief facts of the case are that assessee is engaged in the business of manufacturing of engineering goods, equipments forging machines, exhibition centre and Reality IT parks and investments. Assessee filed its return of income on 12.10,2016 reporting total income at Rs.174,74,86,640/-. Assessment was completed u/s. 143(3) vide order dated 29.12.2018 at assessed total income of Rs.174,86,65,860/- after making an addition of Rs.11,79,221/-. The said addition pertains to sundry debtors written off during the year for which ld. Assessing Officer observed that these amounts have never been offered to tax either during the previous year or earlier years. Thus, assessee failed to satisfy the conditions provided in section 36(2)(i) and also disqualifies from availing deduction u/s. 36(1)(vii). Details of the amount written off by the assessee for which the addition was made is tabulated as under:

NESCO LIMITED
FY : 2015-2016

Statement of sundry balances written off against advances given to suppliers for repair & maintenance works in the BEC

Sr. No.	Suppliers / Creditors Name	Amount fts.	Balance recoverable from the vendors / creditors due to work not completed as per satisfaction	PAN NO
1	Sezal Glass Ltd.	320,449	Balance recoverable from advances paid towards purchase of plumbing fixture in the 2012-13 for repair works	
2	D Zigner Carpet	251,094	Balance advances not recovered for the 2012-13 and 2013-14 against carpet supply for BEC Halls	
3	Aditya Environmental Services Pvt Ltd.	248,064	2013-14 paid for environmental clearance for bec center	AADCA4730B
4	Road Safety Marks	243,750	50 % Advances paid towards car parking area maintenance in the 2011-12 but works not completed by the contractors.	
5	Sezal Encasa	94,544	Balance recoverable from advances paid towards purchase of plumbing fixture in the 2012-13	
6	DSP Design Associates	21,320		AABCD2100N
TOTAL		1,179,221		

4. According to the assessee, it had advanced money during the course of its business for the purchase of goods and services. The vendors/suppliers to whom advances were given did not provide goods as required or rendered part of the services which resulted into certain amounts recoverable from these parties and were not returned to the assessee. In the given circumstances, assessee had no option but claim such balance amount as business loss since these parties did not return the balance to the assessee after appropriation towards goods/services provided by them. According to the assessee, since assessee had given trade advance during the course of its business, it claimed the irrecoverable amounts on this account as business loss. Ld. Assessing Officer has under a mistaken notion treated it as claim of bad debts and charged the assessee that it has concealed the particulars of income to lower its tax liability, since assessee never offered to tax, these amounts in the previous year or earlier years. Ld.

Assessing Officer completed the penalty proceedings by imposing minimum penalty of Rs.4,08,100/- for concealment of income. Aggrieved, assessee went in appeal before the ld. CIT(A).

5. It was contended by the assessee that ld. Assessing Officer had never doubted the fact above the advance given by the assessee to these parties for the purpose of its business. Also, the fact that these amounts were never received back by the assessee was not doubted by the ld. Assessing Officer. According to the assessee, the only reason for disallowing the claim of assessee was that these were treated as bad debts for which the primary condition was not fulfilled. However, claim of the assessee is that it is its business loss and not towards claim of bad debts as contemplated by the ld. Assessing Officer. Ld. CIT(A) sustained the penalty so imposed by observing that assessee could not prove deductibility of the expenses so claimed, since in the quantum proceedings, assessee had contested it before the ld. CIT(A) who did not agree with the contentions of the assessee and confirmed the addition so made, though assessee did not file an appeal before the Tribunal by taking into account the smallness of the amount disallowed. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee reiterated the above stated facts and are not repeated for the sake of brevity. The said facts are undisputed as nothing is brought on record by the other side to controvert the same. From the details tabulated above, in respect of advances given by the assessee, part of which remained un-settled owing to reasons tabulated above, the same were written off as business loss, since assessee assessed their irrecoverability. Assessee had offered the explanations called for in respect of the said claim of business loss by providing the necessary details.

6.1. We note that it is a settled position that a mere disallowance of a claim made by the assessee does not automatically invite the penalty proceedings. Merely because the claim of the assessee is not accepted by the Assessing Officer will not lead to imposition of penalty u/s. 271(1)(c). The said proposition is settled by the Hon'ble Supreme Court in the case of CIT(A) Vs. Reliance Petroproducts, 322 ITR 158 (SC) wherein Hon'ble Court observed that *"If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/s. 271(1)(c), i.e., clearly not the intendment of the legislature."* Considering the facts on record and the judicial precedent referred above, we delete the penalty imposed by the ld. Assessing Officer. Accordingly, ground raised by the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 26 November, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 26 November, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai