

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.81/RPR/2014
निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Rukmani Engineering Works
(Now Rukmani Infra projects Pvt. Ltd.)
MIG-384, SVBP Nagar, Jamnipali,
Korba (C.G.)
PAN: AAIFR4667G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2025

घोषणा की तारीख / Date of Pronouncement : 21.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income Tax (Appeals), Bilaspur, dated 15.11.2013, which in turn arises from the order passed by the A.O under Sec.251/271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') dated 25.02.2013 for the assessment year 2008-09. The assessee firm has assailed the impugned order on the following grounds of appeal before us:

- “1. That, the learned CIT (A) has committed serious error in not quashing the assessment order as no notice u/s.143 (2) of the Income-tax Act. 1961 (hereinafter referred as the Act) has been served on the appellant within the prescribed period as per the provisions of the Act.
2. That, the learned CIT (A) has committed serious error in not quashing the assessment order as the notice u/s.143 (2) of the Act has been issued by the learned Assessing Officer on an extraneous reasons and is a case of non application of mind.
3. That, the order of the learned Assessing Officer is illegal, arbitrary, without jurisdiction, unjust and contrary to the evidence on record and for that matter same is liable to be quashed and/or annulled. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income. The learned CIT appeals have partially consider the fact.
4. That, the learned Assessing Officer has proceeded to complete assessment without serving notice u/s.143 (2) of the Act on the appellant within the prescribed period for which the assessment orders, demand notice are liable to be quashed and/or annulled. Therefore penalty should not be levied as there is neither concealment of income not furnishing of inaccurate particulars of income.
5. That, the learned Assessing Officer has issued notice u/s 143 (2) of the Act on an extraneous reason and is a case of non-

application of mind for that matter notice u/s 143 (2) of the Act being illegal, the assessment order and the demand notice on the basis of said illegal notice are liable to be quashed and/or annulled. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

6. That, the impugned order of assessment and demand notice received by the appellant on 08.01.2011 is barred by limitation and for that matter, the demand notice and assessment order are liable to be quashed and/or annulled. As there cannot be any demand. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

7. That, the learned Assessing Officer has made disallowance of expenses u/s. 40 (a) (ia) of the Act when the entire amount has been paid and nothing remains payable and for that matter the disallowance u/s.40(a)(ia) of the Act is illegal, without jurisdiction and the same is liable to be deleted. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

8. That, the learned Assessing Officer has erred both in law and in fact by estimating the income of the appellant and for that matter the same is liable to be deleted. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

9. That, the learned Assessing Officer has erred both in law and in fact by estimating the profit of the appellant @ 8% of the turnover which is contrary to the evidence or record and for that matter the same is liable to be deleted. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

10. That, the learned Assessing officer has erred both in law and in fact by estimating the profit @ 8% of the turnover without having any comparable case on surmise and conjecture and for that matter same is liable to be deleted. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income. The learned CIT appeals have partially consider the fact.

11. That, the learned Assessing Officer has erred both in law and in fact by making disallowance u/s.40 (a) (ia) of the Act after estimating the income and for that matter the learned Assessing Officer has made double addition u/s.40 (a) (ia) of the Act which is not sustainable in the eye of law and the addition u/s.40(a) (ia)

of the Act is liable to be deleted. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

12. That, the learned Assessing Officer has erred" both in law and in fact by initiating penalty proceeding u/s. 271 (1) (C) of the Act and for that matter the penalty proceedings is liable to be quashed. Therefore penalty should not be levied as there is neither concealment of income nor furnishing of inaccurate particulars of income.

13. Without prejudice to the above the LAO has erred in levying penalty on estimation of 8% profit on gross receipts ignoring the profit shown by the assessee in the return of income i.e. Rs. 35,29,929/-.

14. That The learned CIT (Appeals) has not appreciated the fact that there is no concealment of income amounting to Rs.33, 55,197/-, towards suppressed profit, of Rs.9, 00,000/- towards capital introduction leading to concealed income Rs.4, 14,975/- on account of unexplained expenditure and has up hold penalty of 100% on income alleged to have escaped amounting to Rs. 1400000/- which is excessive illegal and appeared to faulty and hence bad in law.

15. That the learned CIT (Appeals) has not appreciated the fact that the order passed u/s 144 is illegal as no proper notice was issued u/s 143 (2). More over service of the order was time barred and has no legal standing and the entire demand is illegal needs to be quashed. Hence no penalty can be imposed.

That the Appellant craves the leave of the Hon'ble Bench to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal, submit written submissions, paper book and such other facts and figures before or at the time of final hearing of the case, if necessary so arises."

2. Succinctly stated, the assessee firm which is engaged in the business of execution of works contracts had filed its return of income for A.Y.2008-09 on 30.09.2008, declaring an income of Rs.35,29,930/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s. 143(2) of the Act.

3. Thereafter, assessment was framed by the A.O vide his order passed u/s.144 (*sic*), dated 31.12.2010, wherein the income of the assessee firm was determined at Rs.6,07,64,390/-, after, inter alia, making certain additions/disallowances, viz. (i) disallowance u/s. 40(a)(ia) of the Act : Rs.4,89,10,524/-; (ii) determination on an estimate basis the income of the assessee i.e. @ 8% of its turnover of Rs.13,69,18,308/- : Rs.1,09,53,864/-; and (iii) addition of the credits in capital accounts of the partners, viz. S/shri Raj Kishore Sahu (Rs.3.50 lacs) & Shri Uday Nath Sahu (Rs.5.50 lacs) : Rs.9 lacs. The A.O while culminating the assessment initiated penalty u/s. 271(1)(c) of the Act.

4. Aggrieved the assessee firm assailed the quantum assessment before the CIT(Appeals) who disposed of the appeal vide his order dated 30.01.2012. Ostensibly, the CIT(Appeals) had disposed the quantum appeal by observing, as under:

(I) that though the assessee firm in its financial statement had disclosed net profit of Rs.68,82,127/-, but had disclosed the same in its return of income for the year under consideration at Rs.35,27,930/-;

(II) that the assessee firm had admitted that certain expenses claimed in its return of income aggregating to Rs.4,14,975/- which were not admissible, viz. (i) FBT : Rs.1,29,423/-; (ii) donation : Rs.1,10,635/-; and (iii) prior period expenses : Rs.1,76,917/-;

(III) the assessee's claim for deduction of interest on capital and remuneration paid to partners were disallowed as it had failed to comply with the notices issued by the A.O u/ss. 142(1) and 143(2) r.w.s. 184(5) of the Act.

5. The CIT(Appeals) based on his aforesaid observations made an addition of Rs.62,12,481/-, viz. (i) addition towards understatement of net profit (admitted by the assessee firm) : Rs.33,54,197/-; (ii) disallowance of certain expenses which were inadmissible :Rs.4,14,975/-; and (iii) disallowance of the assessee's claim for deduction of interest on capital and remuneration paid to partners :Rs.24,43,309/-. Accordingly, the CIT(Appeals) after making the aforesaid additions to the returned income of the assessee firm, determined its business income at Rs.97,42,411/-.

6. Apropos the disallowance made by the A.O of the assessee's claim for deduction of expenses u/s.40(a)(ia) of the Act of Rs.4,89,10,524/-, the same was scaled down by the CIT(Appeals) to Rs.82,08,597/-.

7. Apropos the addition of Rs.9 lacs made by the A.O towards unexplained cash credits in the capital accounts of the partners, the CIT(Appeals) upheld/sustained the same.

8. The A.O after the order in the quantum appeal by the CIT(Appeals) called upon the assessee firm to put forth an explanation as to why penalty u/s.271(1)(c) of the Act may not be imposed upon it qua the additions that were sustained by the latter vide his order dated 30.01.2012. Although the assessee firm tried to impress upon the A.O that no penalty u/s.271(1)(c) of the Act was called for in its hands but the same did not find favour with him.

(a). Apropos the disallowance of the assessee's claim for deduction of expenses of Rs.82,08,597/- u/s.40(a)(ia) of the Act, the A.O observed that as the assessee firm despite being well aware about the statutory provisions of deduction of tax at source had failed to deduct the same on the aforementioned payments, therefore, to the said extent, it was liable to be visited with penalty u/s.271(1)(c) of the Act for furnishing of inaccurate particulars of income and thereby concealing its correct income.

(b). As regards the addition of Rs.9 lacs qua the unexplained additions to the capital accounts of the partners, viz. S/shri Raj Kishore Sahu (Rs.3.50 lacs) & Shri Uday Nath Sahu (Rs.5.50 lacs), the A.O observed that as the assessee firm even in the course of the quantum appeal proceedings had failed to explain the source of the cash credits in the capital accounts of the respective partners, therefore, it was liable to be subjected to penalty on the said amount u/s. 271(1)(c) of the Act.

(c). In so far the estimation of the income of the assessee firm at Rs.1,09,53,864/- i.e. @8% of gross receipts of Rs.13,69,18,308/-, the A.O observed that as the same pursuant to the order of the CIT(Appeals), dated 30.01.2012 was based on factual irregularities modified and scaled down to Rs.97,42,411/- (supra), thus, the same could safely be held as concealment of income by the assessee firm.

9. Accordingly, the A.O observed that pursuant to disposal of the quantum appeal vide order passed by the CIT(Appeals), dated 30.01.2012 the total income of the assessee firm was revised to Rs.1,88,51,010/-, viz. (i) disallowance u/s.40(a)(ia) of the Act : Rs.81,98,597/-; (ii) estimation of income : Rs.97,42,411/-; and (iii) addition on account of unexplained cash credit in the partners capital account : Rs.9,00,000/-. The A.O after excluding the income that was disclosed by the assessee firm in its return of income filed on 13.10.2008 i.e. Rs.35,29,930/-, thus, observed that for the balance addition Rs.1,53,21,080/- [Rs.1,88,51,010/- (-) Rs.35,29,930/-], the assessee firm was liable to be subjected to penalty for concealment of income u/s.271(1)(c) of the Act. Accordingly, the A.O vide his order passed u/s.271(1)(c) of the Act, dated 25.02.2013 holding a conviction that the assessee firm had concealed its income to the tune of Rs.1,53,21,080/-, thus, imposed penalty of Rs. 50 lacs.

10. Aggrieved the assessee assailed the order passed by the A.O u/s. 271(1)(c) of the Act, dated 25.02.2013 before the CIT(Appeals).

11. Apropos the disallowance of the assessee's claim for deduction of interest and remuneration paid to the partners, the CIT(Appeals) was of the view that as neither element of concealment nor furnishing of inaccurate particulars of income regarding the said issue was involved, therefore, no penalty on the said amount was liable to be imposed. At the same time, the CIT(Appeals) directed the A.O to levy minimum penalty on the balance addition of business income of Rs.37,67,172/-(out of Rs.62,12,482/-), viz. (i) understated/suppressed business income of Rs.35,52,197/-, AND (ii) disallowance of certain expenses which were admittedly inadmissible: Rs.4,14,975/- that was sustained by him. Apropos the disallowance of the assessee's claim for deduction of expenses u/s.40(a)(ia) of the Act of Rs.57,58,944/- i.e. expenses incurred on hire charges, wrapping and quoting expense, radiography charges etc., on which the assessee firm had failed to deduct tax at source or carried out short deduction, the CIT(Appeals) was of the view that as there were no adverse inferences drawn by the A.O regarding the genuineness of the incurring of the said expenses, therefore, no penalty u/s. 271(1)(c) of the Act was liable to be imposed on the amount of expenditure so disallowed. At the same time, the CIT(Appeals) observed that the assessee's claim for deduction of certain expenses of Rs.24,49,653/- which were wrongly

disallowed u/s. 40(a)(ia) of the Act, thereafter, was rectified in the course of quantum appeal and modified as an addition u/s. 69C of the Act. As the A.O had not made any specific comment regarding the imposition of penalty on the aforesaid addition of Rs.24,49,653/- (supra), therefore, the CIT(Appeals) was of the view that no penalty on the said amount could have been imposed.

12. As regards the penalty imposed u/s.271(1)(c) of the Act on the addition made by the A.O towards unexplained credits in the capital accounts of the partners aggregating to Rs.9 lacs, the CIT(Appeals) upheld the same.

13. Accordingly, the CIT(Appeals) based on his aforesaid deliberations directed the A.O to impose penalty qua the tax that was sought to be evaded by the assessee firm on its income of Rs.46,47,172/- [Rs.37,67,172/- (+) Rs.9,00,000/-]. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“Decision-Submission made by the Ld. AR was considered carefully. The AO In the order of assessment u/s.144 dated 21-12-2010 estimated the income from business at Rs.1,09,53,867/- by applying net profit rate at 8% of the turnover and initialed penalty proceedings u/s.271(1)(c) of the Act. The CIT(Appeal), Bilaspur vide order in ITA No. 202/2010-11 dated 30-01-2012 confirmed the income from business at Rs.97,42,453/- and allowed relief of Rs.12,11,453/-. The relevant portion of the observation of the CIT(Appeals), Bilaspur in ITA No. 202/2010-11 is reproduced hereunder:.

"As per the audit report, the appellant firm maintains cash book, ledger, bank statements, bills and vouchers etc. generated by computer. As per the audited "Gross Contract and P&L A/c.", the total turnover of the year from fabrication, erection, machine hiring, material supply, running maintains is Rs.13,69,18,308/- ,besides WIP of Rs.22,26,400/- and gross profit is Rs.2,81,05,809/-. The net profit of the firm is Rs.68,82,127/-, after deduction of remuneration and interest of Rs.18,00,000/- and Rs. 6,43,309/- paid to the partners. The net profit was distributed at Rs. 33,72,242/- to Shri Rajkishore Sahu, Partner and Rs.35,09,885/L to Shri Way-Math Sahu, Partner and credited to their respective Capital Account. But, contrary to the net income of Rs.68,82,127/-, the appellant firm filed the return for Rs.35,27,930/-. Thus, there is a clear cut understatement of net profit of the year to the extent of Rs.33,52,19743'he Ld. AR attributes the difference to an inadvertent omission and admits the net profit of the appellant firm for the year under consideration at Rs.68,82,127/-

Fresh opportunities of producing the books of account alongwith bills and vouchers were given even at appellate stage. But, the Ld. AR failed to furnish the same before me and before the AO on remand proceedings by contending that the partnership firm has stopped its business at Korba and the partner have floated a company in the name of M/s. Rukmani Infra Project Pvt. Ltd., Bhubneshwar wherein, he is posted as DGM, Finance. Thus, aforesaid expenses are not subject to verification. The-Ld.AR, however, admits that prima facie inadmissible expenses i.e. FBT of Rs.1,29,423/-, Donation and Secretion of Rs.1,10,635/-, Prior Period expenses of Rs. 1,76,917/- totaling to Rs.4,16,975/- ought to be added to net profit at Rs.68,82,127/-."

Thus, the income from the business is Rs.68,82,127/- plus Rs. 4,14,975/- i.e. Rs.72,99,102/-, as admitted by the appellant before the CIT(Appeals), Bilaspur in course of appellate proceedings on quantum appeal. To this admitted income, the CIT(Appeals), Bilaspur added Rs.24,43,309/- being interest and remuneration paid to the partners not admissible for complete failure of the appellant firm to comply notice u/s 142(1)/143(2) r.w.s. 184(5) of the Act and modified the addition to Rs. 97,42,411/-. Hence, it is not a case that the CIT(Appeals), Bilaspur confirmed the addition estimated at 8% of the turnover and accordingly, the submission of the Ld. AR that the AO has imposed penalty on estimated income is misplaced. Similarly, on account of theory of merger, the submission of the Ld. AR that the CIT(Appeals) has not initiated penalty proceedings

while modifying the income estimated by the AO is also misplaced.

As stated above, the appellant reduced the net profit after all deductions including deduction u/s.40(b) from Rs.68,82,127/ to Rs.35,27,930/- in the computation of income filed alongwith the return and claim refund. Thus, the appellant firm deliberately reduced the profit by Rs.33,52,197/-. Similarly, the appellant has grossly failed to explain and establish the expense to the extent of Rs.4,14,975/- and it was also admitted in course of appellate proceedings for quantum appeal that the expenses were prima-facie inadmissible. In such circumstances of the case, the ratio of Dharmendra Textile Processors & Others Vs. Union of India reported in (2008) 306 ITR 277 (SC) is clearly applicable for concealment of real income which was very well within the knowledge of the appellant at the time return was filed and refund was claimed. Also, reliance is placed in the decision of the Hon'ble High Court of Chhattisgarh in the case of Chandra Prasad Liquor Vs. CIT reported in (2009) 227 CTR 409. In this case, the assessee did not produce the books of account, bills and vouchers. The AO enhanced the trading result by invoking provision u/s 144 of the Act. The CIT(Appeals) dismissed the appeal which was subsequently, affirmed by the Tribunal the AO levied penalty u/s 271(1)(c) for having furnished inaccurate particulars of income and having concealed the particulars of income. The CIT(Appeals) dismissed the appeal. The Hon'ble Tribunal observed that there is no explanation on record by the assessee as to how the expenditure claimed were not excessive or the expenditure claimed were in relation to the business of the assessee and were of allowable in nature while computing the business income. In absence of any explanation from the assessee the provision of Explanation-1 to section 271(1)(c) is applicable, which lays down that the assessee is guilty of concealment of particular of income in such circumstances and it is deemed concealment. The Hon'ble High Court, Chhattisgarh relying upon the judgment in the matter of Dharmendra Textile Processors & Others reported in (2008) 306 ITR 277 (SC) held that in absence of any' explanation from the assessee, provision of Explanation-1 to section 271(1)(c) is applicable. Regarding addition out of denial of remuneration and interest paid to the partners, I find that the addition was,. made for complete failure of the appellant to comply the notices u/s.142(1)/143(2) r.w.s. 184(5) of the Act. Hence, there is neither any element of concealment nor element of inaccurate particulars of income filed in the return and therefore, penalty on such addition is not leviable. In view of the above facts and circumstance of the case, the AO is directed to levy minimum

penalty on Rs.37,67,172/- out of sustained addition of Rs.62,12,482/- to business income.

The other addition made to the returned income is disallowance of expenses of Rs.4,89,10,524/- u/s.40(a)(ia) and the CIT(Appeals), Bilaspur in the captioned appellate order has allowed relief of Rs.4,07,01,927/-. The addition of Rs.57,58,944 -out of expenditure on hire charges expenses, wrapping and quoting expenses. radiography charges, etc. for non-deduction or short deduction of tax at source and addition of Rs. 24,49,653/- on account of unexplained expenditure was confirmed by the 1st Appellate Authority. So far as addition of Rs.57,58,944/- is concerned, no inaccurate particulars were filed as per his claim of deduction is concerned. There was no concealment of any facts with regard to claim of deduction. There was no contrary observation by the AO regarding genuineness of the expenses incurred for business purpose. In such circumstances of the case, the ratio of the judgment of Hon'ble Apex Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd. reported in 322 ITR 158 is applicable to the facts and circumstances of the case in hand and penalty is not leviable on addition sustained in the quantum appeal. However, as per the normal rule of presumption and evidence, when the appellant has incurred certain expenditure and failed to account it satisfactorily, inference can be drawn that expenditure or unaccounted part thereof must have been made out of undisclosed income of the previous year. For the above reasons, unexplained expenditure to the tune of Rs. 24,49,653/- was brought to record from the submission of the counsel of the appellant and addition to that extent made by the AO u/s 40(a)(ia) was modified to addition u/s 69C. The AO has not made any specific comment regarding penalty imposable on such addition. Rather, he treated the addition as confirmed by CIT(Appeals) u/s 40(a)(ia) of the Act. In view of the above, I find that no penalty on the impugned sum is also imposable for the reasons mentioned above.

6. Regarding penalty imposed on addition of Rs.9,00,000/- sustained in the quantum appeal, it was observed by the CIT(Appeals), Bilaspur in captioned appellate order that the primary information on date, mode and source of introduction of fresh capital by the partners to the partnership firm could not be adduced even at the appellate stage. Rather relying on the ratio of the case CIT vs Taj Borewells (2007) 291 ITR 232 (Mad), he argued that no addition u/s 68 on this count can be made on the basis of the Balance Sheet since 13 & L A/c. and Balance Sheet are not books of account. In this regard, the observation made by the CIT(Appeals), Bilaspur is reproduced hereunder:-

"If the books of account is considered in isolation, then it may mean books in which merchants, traders and business man generally keep their accounts and which are maintained for recording (a) all receipts and expenses with matters relating thereto; (b) all sales and purchases; and (c) the assets and liabilities. They are the documents and ledgers which must be prepared and kept by the business entity including the profit and loss account and the balance-sheet. In traditional terms, books means a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used are kept collectively in one volume. It may also be assumed that it connotes the intention that it should serve as a permanent record. At the same time, to account means to reckon, and it is difficult conceive of any accounting which does not involve either additions or subtractions or both of these operations of arithmetic. A book which contains successive entries of items may be a good memorandum book; but until those entries are totaled or balanced, or both, as the case may be, there is no reckoning and no accounts. A book which merely contains entries of items of which on account is made at any time, is not a book of account in a commercial sense. [Sheraton Apparels Vs. ACIT (2002) CTR 81 (Born. HC)]. Section 2(12A) defines the said term as including ledgers, day-books, cash books, account books and other books whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device.

The provision of section 68 are applicable only when a sum is found credited in the account books of an assessee. However, 'books of account' do not mean cash book only. It would mean complete record, which a businessmen is required to maintain to record his day-to-day transactions. According to the well settled principles of accountancy, each transaction is required to be treated under two heads. Under one head, debit entry is made while under the head, credit entry is to be made. If any sum is introduced in the books of the assessee from his own sources, then cash account is debited while assessee's own account has to be credited. Cash book is nothing but the cash account which is debited if money is received and is credited if money is spent or invested by the assessee. In such cases, corresponding credit or debit entries have necessarily to be made by the assessee in respective accounts. Similar is the accounting procedure to be followed with regard to assets and lides. If the same is not followed, the accounts of the assessee would not tally. Therefore, failure on the part of the assessee to explain an impugned item of balance sheet with reference to the cash book, ledger etc. as defined in section 2(12A) of the Act, justify assessment of the same u/s 68 of the Act. [Relied on Haji

Nazir Hussain Vs. ITO (2004) 91 ITD 42 (Del.) TM]. In the case of Taj Borewells no books of accounts were maintained and it was the first year of assessment different since the books of account are maintained and the impugned, assessment year is not the first year of assessment in the present case in hand. The decisions °faker case laws relied on by the Ld. AR are also not applicable since the primary requirement of establishing the fact of introduction of fresh capital by the partners has not been discharged by adducing the books of account. The Ld. AR was never required to explain the source of the partners. Thus, the first burden to establish the credit entry in the books of account of the previous year has not been discharged either by producing the cash book or the partners. [Relied on CIT Vs. Metacham Industries Ltd. 245 ITR 169 (MP), Sumerchand. Jain Vs. CIT (2007) 292 ITR 241 (MP)]. In view of the above facts and circumstances of the case, I find it a fit case for making addition u/s 68 of the Act in the hands of the appellant firm. The addition made in the returned income is confirmed."

In course of penalty proceedings, the Ld. AR did not furnish any submission to rebut the presumption raised in the Explanation-1 to section 271(1)(c) of the Act. No fresh ground was taken to establish the introduction of fresh capital by the partners with cogent evidence. In absence of any fresh material, observation of the CIT(Appeals), Bilaspur in course of appellate proceedings on quantum appeal is formed as basis for deciding the issue and from the above observation, inference of furnishing in accurate particulars of income in the return is drawn & placing reliance in the ratio of the case in CIT Vs. Reliance Petro Products Pvt. Ltd. reported in 322 ITR 158 found to be applicable, it is held that penalty u/s. 271(1)(c) of the Act is imposable.

In view of the above, the AO is directed to impose minimum penalty on tax sought to evaded on enhanced income of Rs.46,67,172/- (Rs.37,67,172/- + Rs. 9,00,000/-).

3. In the result, the appeal is partly allowed."

14. The assessee firm being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

15. As the assessee firm/appellant despite having been issued notice about the fixation of the hearing of appeal has neither put up an appearance nor filed any application for adjournment, therefore, considering the fact that the case has been going on since 15.09.2016, therefore, we are constrained to dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963 i.e. after hearing the department and perusing the orders of the lower authorities.

16. As is discernible from the record, the CIT(Appeals) while disposing off the appeal filed by the assessee firm against the order passed u/s. 271(1)(c) of the Act had directed the A.O to impose minimum penalty on the tax it had sought to evade on its income of Rs.46,67,172/-, viz. (i) addition made to assessee's business income as was scaled down by the CIT(Appeals) while disposing off the quantum appeal: Rs.37,67,172/-; and (ii) addition of the unexplained cash credits in the partners capital accounts that was sustained by the CIT(Appeals) : Rs.9 lacs.

A). Re: Unexplained cash credit in the partners' capital account: Rs.9 lacs

17. Ostensibly, the assessee firm in the course of the assessment proceedings had failed to explain the source of the credits in the partners capital accounts aggregating to Rs.9 lacs, viz. (i) Shri Raj Kishore Sahu: Rs.3.50 lacs; and (ii) Shri Uday Nath Sahu: Rs.5.50 lacs. As the assessee

firm even in the course of the quantum appeal had failed to come forth with an explanation as regards the source of the credits in the partners capital accounts and, thus, discharge the onus that was cast upon it u/s. 68 of the Act, therefore, the said addition was upheld by the CIT(Appeals).

18. As is discernible from the record, the A.O had, thereafter, imposed penalty u/s.271(1)(c) of the Act on the addition of Rs.9 lacs, which, thereafter, was upheld by the CIT(Appeals).

19. We have thoughtfully considered the issue in hand i.e. imposition of penalty u/s.271(1)(c) of the Act qua the addition of the unexplained credits in the partners capital account during the subject year. As observed by the CIT(Appeals) and, rightly so, as the assessee firm as per the mandate of "Explanation-1" of Section 271(1)(c) of the Act, had failed to come forth with any explanation as regards the aforesaid credits in its books of accounts, therefore, it was liable to be saddled with penalty under the aforesaid statutory provision. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who had rightly saddled the assessee firm with penalty on the aforesaid addition of Rs.9 lacs made u/s. 68 of the Act, uphold the same.

B). Re: Penalty sustained by the CIT(Appeals) qua the addition to the business income of Rs.37,67,172/- (out of Rs.62,12,482/-)

20. Apropos the aforesaid issue, we find that the CIT(Appeals) while disposing off the quantum appeal had, inter alia, observed that the assessee firm in its return of income had understated its net profit by an amount of Rs.33,52,197/-. Accordingly, the CIT(Appeals) made an addition of the aforesaid amount to the returned income of the assessee firm. Apart from that, the CIT(Appeals) had further disallowed certain expenses aggregating to Rs.4,16,975/- which the assessee firm had admitted before him as inadmissible.

21. Thereafter, the CIT(Appeals) while disposing off the appeal filed by the assessee firm against the order passed by the A.O u/s. 271(1)(c) of the Act, had directed the A.O to impose minimum penalty on tax sought to be evaded by the assessee firm on the aforementioned amount i.e. Rs.37,67,172/-, viz. (i) understated net profit : Rs.33,52,197/-; and (ii) disallowance of expenses *prima-facie* inadmissible : Rs.4,16,975/-.

22. Aggrieved, the assessee firm has assailed the order passed by the CIT(Appeals) to the extent he had directed the A.O to impose penalty u/s. 271(1)(c) of the Act on the addition to its business income of Rs.37,67,172/-.

23. We have given thoughtful consideration to the aforesaid issue in the backdrop of the contentions advanced by the Ld. DR, and also perused the orders of the lower authorities. As it is a matter of fact borne from record

that the assessee firm had understated its “net profit” by an amount of Rs.33,52,197/- (supra), wherein, as per its audited financial statements, the “net profit” was disclosed at Rs.68,82,127/- but in its return of income the same was disclosed at Rs.35,27,930/-, thus, the same had resulted to understatement/suppression of “net profit” Rs.33,52,197/-. Although the assessee firm on being confronted with the aforesaid fact in the course of the quantum appeal before the CIT(Appeals), had stated that the said infirmity was on account of an inadvertent omission, but we are unable to persuade ourselves to concur with the same. As the assessee firm had failed to come forth with any plausible explanation for having suppressed/understated the “net profit” in its return of income by an amount of Rs.33,52,197/- (supra), therefore, as observed by the CIT(Appeals) and, rightly so, it was liable to be saddled with penalty u/s. 271(1)(c) of the Act. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who had rightly saddled the assessee firm with penalty u/s. 271(1)(c) of the Act on the aforementioned amount of understated/suppressed “net profit of Rs.33,52,197/-, uphold the same.

**C). Re: Disallowance of assessee’s claim for deduction of expenses
Rs.4,16,975/-**

24. Apropos the assessee’s claim for deduction of expenses of Rs.4,16,975/-, viz. (i) FBT : Rs.1,29,423/-; and (ii) donation :

Rs.1,10,635/-; and (iii) prior period expenses : Rs.1,76,917/-, we find that the assessee firm had submitted before the CIT(Appeals) in the course of quantum appellate proceedings that as it had discontinued its business at Korba, therefore, it was not in a position to get its aforesaid claim for deduction verified.

25. We are of the view that as there is nothing available on record which would substantiate the genuineness of the aforesaid expenses, which the assessee had admitted before the CIT(Appeals) as inadmissible, therefore, the same is nothing short of raising of a false/wrong claim of deduction. We, thus, in terms of our aforesaid observations, find no infirmity in the view taken by the CIT(Appeals) who had rightly imposed penalty u/s.271(1)(c) of the Act on the assessee firm for raising a wrong claim of deduction of expenses of Rs.4,16,975/-.

26. In the result, appeal filed by the assessee firm being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 21st day of January, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 21st January, 2025.

***SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.