

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 555/Coch/2024
Assessment Year: 2016-17**

Joel Jewellery Works Appellant
Chiyaram P.O., Thrissur 680006
[PAN: AAGFJ1072R]

vs.

The Income Tax Officer Respondent
Ward - 2(2), Thrissur

Appellant by: ----- None -----
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 17.01.2025
Date of Pronouncement: 22.01.2025

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 29.12.2023 for Assessment Year (AY) 2016-17.

2. Brief facts of the case are that the appellant is a partnership firm engaged in the business of jewellery. The return of income for AY 2016-17 was filed on 26.01.2017 disclosing total income of Rs. 5,00,140/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward 2(2), Thrissur (hereinafter called "the AO") vide order dated 10.12.2018 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income

of Rs. 45,71,593/-. While doing so, the AO made addition of Rs. 40,00,000/- by holding that interest bearing funds have been diverted for non business purposes. The AO also made addition of Rs. 71,453/- u/s. 40(a)(ia) of the Act being 30% of the interest amount of Rs. 2,38,178/- paid to Ary Gold Designers on the ground that no tax was deducted at source. The AO also initiated penalty proceedings u/s. 271(1)(c) of the Act by alleging that the appellant is guilty of furnishing inaccurate particulars of income. There is nothing on record to show that the appellant contested the addition before the appellate forum. The appellant responded to the show cause notice issued u/s. 274 r.w.s. 271(1)(c) of the Act. The appellant filed detailed explanation stating that the appellant cooperated with the Department in the assessment proceedings and has not furnished inaccurate particulars of income. However, the AO proceeded with levy of penalty of Rs. 12,58,100/- via order dated 26.06.2019.

3. Being aggrieved, an appeal was filed before the CIT(A) contending that the AO made addition on estimate basis, it does not amount to furnishing of inaccurate particulars of income. Further, it was contended that mere disallowance of a claim does not amount to furnishing of inaccurate particulars of income relying on the decision of the Hon'ble Delhi High Court in the case of *Communication Services India Pvt. Lt. v. CIT* [2012] 18 Taxman 144 and also Hon'ble Supreme Court judgement in the case of *Mak*

Data 358 ITR 593. The CIT(A), after extracting the written submissions and statement of facts, confirmed the findings of the AO without giving any findings.

4. Being aggrieved, appellant is in appeal before me in the present appeal.

5. When the appeal was called nobody appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceeded to dispose of the appeal after hearing the learned Sr. DR.

6. The solitary issue arises in the present appeal is whether the CIT(A) is justified in confirming the action of the AO in levying penalty u/s. 271(1)(c) of the Act. A mere perusal of the CIT(A)'s order, it would clearly show that there is no independent application of mind to the facts of the case and the law governing the issue. The CIT(A), after merely extracting the statement of facts, grounds of appeal and written submissions jumped to the conclusion that the appellant furnished inaccurate particulars of income without discussing the factual position of the case. The CIT(A) also has not dealt with the grounds of appeal raised by the appellant. In the above circumstances, I am of the considered opinion that in the interest of justice the matter requires remand to the file of the CIT(A) for de novo adjudication in accordance with law after affording opportunity of hearing to the appellant. Ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22nd January, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 22nd January, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin