

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.319/Nag./2024
(Assessment Year : 2015-16)

Dy. Commissioner of Income Tax
Circle-2, Nagpur

..... Appellant

v/s

M/s. Tristar Retail Concepts Pvt. Ltd.
Plot no.2, Near Museum Road
Near Gupta House, Nagpur 440 001
PAN – AACCT8827H

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 04/02/2025

Date of Order – 25/02/2025

ORDER

PER V. DURGA RAO, J.M.

This appeal by the Revenue is directed against the impugned order dated 20/06/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2015-16.

2. The Revenue has raised following grounds:-

"1. Whether on facts and circumstance so the case, the Id. CIT(A) was justified in deleting the penalty levied on the grounds that no deliberate attempt was made by the assessee to conceal the income or furnish inaccurate particulars of income, when, the assessee had made erroneous claim on account of loss. on sale of assets in return of of income and the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro products has, held that erroneous claim amounts to furnishing inaccurate particulars of

income and such finding has been established by the AO in the assessment order.

2. Whether on facts and circumstances of the case, the assessee was justified in raising the grounds of appeal that notice u/s 271(1)(c) was bad in law when he was aware of the reasons for initiation of penalty u/s 271(1)(c) of the Act in light of discussions in the Assessment Order and therefore, the notice issued u/s 271(1)(c) of the Act was a valid notice in view of the decision of Hon'ble High Court of Bombay in Ventura Textiles Ltd. vs. Commissioner of Income Tax, Mumbai City-II [2020] 117 taxmann.com 182(Bombay)?"

3. The appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal."

3. Facts in Brief:- The assessee is a Private Limited Company engaged in the business of trading in consumer items. For the year under consideration, the assessee filed its return of income under section 139 of the Act on 27/10/2015. The case was selected for scrutiny and statutory notices were issued and served upon the assessee. The Assessing Officer completed assessment under section 143(3) of the Act after making addition of ₹ 4,72,27,468. Penalty proceedings under section 271(1)(c) of the Act levying penalty of ₹ 1,30,99,807, on account of loss on sale of fixed assets worth ₹ 4,02,50,000, and the demand was raised.

4. On appeal, the learned CIT(A) deleted the penalty imposed of ₹ 1,30,99,807, under section 271(1)(c) of the Act by holding as under:-

"4. Appellate Findings

Appeal Notices were issued to the assessee on 26.12.2020, 17.08.2020 and 04.05.2023 fixing the case for 31.12.2020, 01.09.2022 and 11.05.2023. No reply filed by the Assessee so far, in such circumstances, the case of the assessee is being decided on the merits.

4.1 In the assessment order, passed u/s 143(3) on 21.12.2017 the following additions were made by the assessing officer. The same issues have been reproduced in the penalty order which are as below:

On perusal of 26A5 of Assessee it is observed that assessee was in receipt of amount from M/s Arvind Limited having TAN-AHMT00462A and from State Bank of India. Further assessee was asked to furnish reconciliation of receipts with 26A5 and ITR and the same was furnished by the assessee, the details are as under:

During the course of assessment proceedings by issuing show cause notice dated 04/12/2017 assessee was asked to explain as to why difference in receipt of Rs. 1,25,428/- should not be added back to your total income. In response, assessee submitted his reply, para I of the said reply is reproduced as under:

"With respect of difference of Rs. 1,25,428/- in 26A5 and in books of accounts, it is submitted that the assessee had duly submitted the working sheet for the difference in the receipts and the same is offered for taxation. The difference is only due to interest accrued by the banks on the deposits which was not made aware to the assessee. "

The above said reply of the assessee was perused and considered. In above mentioned reply assessee itself accepted that assessee had failed to show difference in receipt of Rs.1,25,428/- which was credited by M/s Arvind Limited and State Bank of India. Whereas the basic fact is that assessee is following mercantile system of accounting and as per the said system of accounting assessee should disclose the income/receipts in such financial year in which it was accrued on accrual basis. In fact this disclosure of undisclosed receipt was made by assessee when it was pointed out during the course of assessment proceedings. Another fact is that assessee has already booked entire expenses against the difference in receipt of Rs. 1,25,428/- hence, no deduction in respect of any expenditure or allowance shall be allowed to the assessee. Indeed it was purely undisclosed income which was noticed during assessment proceedings. Also assessee could not substantiate the reason for non consideration of receipts in computation of total income. He wishfully didn't disclose the receipts of Rs.1,25,428/-. The AO rightfully added undisclosed income of Rs.1,25,428 and initiated penalty proceedings u/s 271(1)(c) for concealing the income.

The reply filed by assessee is perused but the same is not acceptable in light of above discussion. Therefore on the facts and circumstances, I am satisfied that the assessee has concealed particulars of his income and penalty u/s 271(c) is leviable on the issue.

In view of the above discussion, it is clear that the assessee has failed to offer any valid explanation/ reasonable cause even during the penalty proceedings. I am satisfied that the assessee has concealed the particulars of his income and thus filed inaccurate particulars of income and as such committed a default within the meaning of provisions of section 271(1)(c) and hence it is a fit case for levy of penalty u/s 271(1)(c).

Further on perusal of profit & Loss account assessee has claimed loss on Sale of Fixed Assets of Rs.4,02,50,000/- which resulted in loss of Rs.4,20,81,645/-. During the course of assessment proceedings by issuing show cause notice dated 04/12/2017, assessee was asked to explain why loss on sale of fixed assets debited as revenue expenditure and the same should not be disallowed

as per the provisions of I. T. Act, 1961. In response, assessee furnished its reply, para 6 of the said reply is reproduced as under:—

"with respect to loss on sale of fixed assets it is submitted that the same can be added back to the Income of the assessee company."

The above said reply of the assessee is perused and considered. In above mentioned reply assessee itself accepted that assessee had wrongly claimed the loss on sale of fixed assets as revenue expenditure whereas the basic fact is that any loss on sale of fixed assets is not allowable as revenue expenditure.

In fact this disclosure of wrong claim which was offered by assessee was nothing but wrong claim and offered only when it was pointed out during the course of assessment proceedings. Indeed it was a purely unexplained expense which was noticed during assessment proceedings, Also assessee could not substantiate the reason for consideration of unexplained expense in computation of total income. He wishfully claimed the non-allowable expense of Rs.4,02,50,000/-. It is to be noted that loss on sale of fixed assets aren't deductible under Profit & Gain from Business or profession income. Loss or profit on sale of depreciable fixed assets isn't considered in profit & Loss account. It is adjusted against the block of assets and subsequently, the WDV of complete block is reduced. The profit & Loss on sale of fixed assets shall be adjusted in the block of assets. As per Income tax Act profit/Loss on sale of fixed assets cannot be charged to Profit & Loss account. So, if the company has done that, same will be reversed while calculating income of assessee. However, assessee did not do the same. He didn't add back the loss on sale of fixed assets, and wrongly claimed the same as expenditure. Therefore, Rs.4,02,50,000/- was rightly added to the total income of assessee on account of incorrect claim loss on Capital Assets.

In response to the notices issued the assessee submitted that "The assessee begs to submit that while filing of return of income the employee of the assessee had inadvertently didn't added back the loss on sale of fixed assets to the income but the same has added back in fixed asset schedule i.e. book of assets or working & claiming of depreciation as per Income Tax Act, 1961. TIE oversight by the employee was not at all intentional. There was a separate line item indicted loss on fixed assets of Rs. 4.02 crore in the profit & loss Account which was omitted to be added back in the computation. The error went unnoticed by the tax auditor as well as the same was overlooked while certifying the Profit & loss account by the Accountant while preparing the computation or income. Moreover the assessee company due to negative business sentiments had incurred heavy losses in the current year as well as in future gears resulting in non set off of any loss carried forward to subsequent gears hence, there was no intention to avoid payment of taxes. The facts & circumstances of the cases are very similar to that of Harish Nainder Salve vs ACIT (ITA No. 100/ Del 2015) therein the penalty levied was deleted by the Hon'ble Delhi Bench of Income Tax Appellate Tribunal. The Hon'ble bench had further relied on the decision of the ITAT, Mumbai Bench in the case of CIT vs. Royal Metal Printers (p) Ltd. passed in ITA No. 3597/Mum/1996 A Y 1991-92 dated 08.10.2013 reported in (2005) 93 TTJ (Mumbai). Further the reliance is also placed on the decision given by Hon'ble Supreme Court of India in the case of Reliance Petro products Ltd. (supra) & Price Waterhouse Coopers (P) Ltd. (Supra) discussed above."

The above reply submitted by the assessee is considered carefully and the reply submitted by Authorised Representative of the assessee is not acceptable.

4.2 The assessing officer imposed the 100% penalty u/s 271(1)(c) of the IT Act, 1961 expressing this satisfaction with the reply of the assessee and concluding that assessee has failed to offer valid explanation/reasonable cause even during the penalty proceedings. The AO further writes that he is satisfied with the fact that assessee has filed inaccurate particular of income and thus concealed the particular of his income and as such committed a default within the meaning of provisions of section 271(1)(c). Hence liable for penalty.

4.3 Although the appellant has not filed any reply to the appeal notices, it is understood that before a penalty can be imposed, the entirety of the circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had not disclosed all the material facts in the return of income and had not consciously concealed the particulars of his income or had furnished inaccurate particulars thereof. There seems to be mistakes of computation overlooked by the auditors and accountants of the business concern. The 'Concealment of income' and 'furnishing of inaccurate particulars' are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. The assessee has admitted its mistake of computation during the course of assessment proceedings and penalty proceedings and nothing deliberate has been found by the A. O during both the proceedings.

4.4 In the case of T. Ashok Pai Vs. CIT (2007) 161 Taxman 340, 292 ITR 11 (SC). The Hon'ble court has observed as follows:

"Penalty under clause c of Sub-Section 1 of Section 271 of the Income-tax Act, 1961, if the Assessing Officer or the Commissioner of Income Tax (Appeals) during the course of the Assessment Proceedings under the Act is satisfied that any person has 'concealed' or 'furnished inaccurate particulars of income'. The words 'concealed' or 'furnished inaccurate particulars of income' has been defined either in this Section nor any where else of the Act. One thing is certain that these two circumstances are not identical in details although they may lead to the same effect, namely, keeping a certain portion of the income. The word 'conceal' is derived from the Latin word 'concelare' which implies to 'hide'. It signifies a deliberate act of omission on the part of the assessee. A mere omission or negligence would not constitute a deliberate act suppressio veri or suggestio falsi -

4.5 The approach of the appellant towards the assessment proceedings as well as penalty proceedings was cooperative and no deliberate attempt to conceal the income or filing the inaccurate particular has been brought out by the A.O in the penalty order. In view, of the above the penalty imposed of Rs. 1,30,99,807/- u/s 271(1)(c) of the IT Act, 1961 is deleted and the ground taken by the assessee is allowed.

5. As a result, appeal is allowed."

The assessee being aggrieved is in appeal before the Tribunal.

5. The learned Departmental Representative relied upon the penalty order passed by the Assessing Officer.

6. The learned Counsel for the assessee submitted that the assessee is a persistent loss-making company and had fully co-operated during the assessment proceedings. The penalty in question was levied on two additions/disallowance. A sum of ₹ 1,25,428, was added towards a difference in receipts between books of accounts and Form 26AS. The assessee had inadvertently omitted to report this income, but the mistake was accepted during the assessment proceedings. The assessee had duly maintained books of accounts, and no defects were found therein. Further, a sum of ₹ 4,02,50,000, was added towards loss on sale of fixed assets, which inadvertently remained to be added back in the computation of income. The learned counsel submitted that this was a bona fide omission, as the loss was duly recorded in the audited financial statements and fixed asset schedule, but remained to be added back due to an oversight by the employee responsible for tax computations. This error was also overlooked by the tax auditor. The assessee accepted the mistake and agreed to the disallowance during the assessment proceedings. The learned counsel argued that there was no deliberate attempt to furnish inaccurate particulars of income, and the bona fide nature of the omission was evident from the fact that the assessee had voluntarily accepted the errors when pointed out. Furthermore, the assessee had been consistently incurring losses and, therefore, had no intention to evade tax. The learned CIT(A) rightly appreciated the facts and

deleted the penalty, observing that the assessee's conduct was bona fide, and there was no wilful concealment of income.

7. We have heard the rival parties, perused the order of the authorities below and gone through the material available on record. It is undisputed that both additions were made on account of inadvertent mistakes by the assessee. The details regarding both additions were duly furnished by the assessee, and there was no attempt to conceal income or furnish inaccurate particulars. The learned CIT(A) has rightly observed that the assessee cooperated during both assessment and penalty proceedings, and no deliberate attempt to conceal income or file inaccurate particulars was found. Reliance is placed on the following judicial precedents, which support the deletion of penalty in such cases:

- i) *Price Waterhouse Coopers Pvt. Ltd. v. CIT 348 ITR 306* (SC – The Hon'ble Supreme Court held that penalty should not be levied for a bona fide and inadvertent human error.
- ii) *CIT v. Reliance Petroproducts Pvt. Ltd. 322 ITR 158* (SC) – The Hon'ble Supreme Court held that mere making of a claim, which is not sustainable in law, does not amount to furnishing inaccurate particulars of income.

8. The assessee has also filed a paper book (pages 1-83), including:

- i) *Copy of audited financial statements for the relevant year,*
- ii) *Copy of ITR-V acknowledgement for subsequent years, demonstrating that the company was consistently incurring losses.*

9. Considering the facts of the case and the legal precedents cited, we find no reason to deviate from the well-reasoned order passed by the learned CIT(A). There is no justification for levying penalty of ₹ 1,30,99,807, under

section 271(1)(c) of the Act. Consequently, by upholding the impugned order passed by the learned CIT(A) we dismiss the grounds raised by the Revenue. The Assessing Officer is directed to delete the penalty of ₹ 1,30,99,807, levied under section 271(1)(c) of the Act.

10. In the result, department's appeal stands dismissed.

Order pronounced in the open Court on 25/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/02/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur