

**IN THE INCOME TAX APPELLATE TRIBUNAL
'DIVISION BENCH', AMRITSAR**

**BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 348/Asr/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Surya Automobiles Pvt Ltd., Near DAV Campus, Hanumangarh Road, Abohar	बनाम	The DCIT, Circle II, Bhatinda
स्थायीलेखासं./PAN NO: AAFCS2711N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(HybridHearing)

निर्धारिती की ओर से/Assessee by : Shri P.N. Arora, Advocate
राजस्वकी ओर से/ Revenue by :Mrs. Neelam Sharma, Sr.DR

सुनवाई की तारीख/Date of Hearing : 26.12.2024
उदघोषणा की तारीख/Date of Pronouncement : 24/03/2025

आदेश/Order

Per Krinwant Sahay, AM:

Appeal in this case has been filed by the Assessee against the order dated 06.11.2023 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) for A.Y. 2014-15.

2. Grounds of appeal are as under:-



- 1 *That the order passed by Ld. CIT(A) NFAC confirming levy of penalty u/s 271 (1) (c) is illegal, unwarranted & not justified.*
- 2 *That the Ld. CIT(A) NFAC has erred on facts and law in confirming the order of the AO imposing penalty of Rs. 690000/- u/s 271(1)(c) of the Act vide order dt. 27.03.2019 subsequently reduced to Rs. 583570/- vide order dt. 11/03/2020 without appreciating the submissions filed by the assessee, and without rebutting the case laws relied upon by the assessee, during the course of appellate proceedings before the CIT (A) NFAC.*
- 3 *That the Ld. CIT(A) NFAC has erred on facts and law while confirming the action of the AO of imposing penalty u/s 271(1)(c) of the Act on account of alleged non-capitalization of interest amounting to Rs. 18,82,009/-/- which could not be capitalized due to inadvertent mistake of the CA while compiling the P&L Account and balance sheet, supported by certificate of the tax auditor, as it is settled principle of law that no litigant should suffer on account of mistake of the counsel.*
- 4 *That the Ld. CIT(A) NFAC has erred on facts and law while confirming the action of the AO of imposing penalty u/s 271(1)(c) of the Act on account of alleged non-capitalization of interest amounting to Rs. 18,82,009/- as it is settled principle of law laid down by Apex Court/P&H High Court/ Amritsar Bench of the ITAT/ CIT(A) NFAC that penalty proceedings being quasi criminal proceedings are independent of*


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assessment proceedings and merely because the assessee has claimed the expenditure which was not accepted or was not acceptable, does not attract penalty u/s 271 (1)(c) of the Act even if the disallowance has been confirmed in the quantum proceedings and no appeal has been filed.

5 *That the humbly appellant pray for permission to add or amend any ground of appeal before disposal the appeal.*

3. Brief facts of the case as per appellate order of Id. CIT(A) is as under:-

That the appellant is a private limited company engaged in the business as a dealer of Hero Motor Corp. It filed the return of income for AY.2014-15, on 30/09/2014 declaring an income of Rs.7018730/- The return of income is supported by audited profit & loss account, trading account, balance sheet & other detailed connected therewith besides audit report u/s 44-AB Gross turnover of the company is 10563.21 lacs & paid up capital of the company is 40.15lacs besides reserve & surplus at Rs. 240.85 lacs. Cash Profit of the company is at Rs. 82.72 lacs. In pursuance to requisition all information called for from time to time were furnished. In the course of assessment proceeding, it was voluntarily submitted that interest



on building term loan amounting to Rs. 1882009/- may be capitalized as it has been omitted to be capitalized due to inadvertent oversight of chartered accountant Sh. Ramesh Babber while compiling P&L a/c, & Balance Sheet. However this fact was retracted vide letter dated 16/08/2016. The appellant company was assessed u/s 143(3) vide order dated 23/09/2016 on an income of Rs.9785350/-.

4. The only issue involved in this appeal is the sustenance of penalty of Rs. 6,90,000/- imposed u/s Section Section 271 (1) (c) of the Income Tax Act, 1961 (in short 'the Act') of the Act. During the proceeding before us, the Id. Counsel for the Assessee has filed written submissions which is reproduced as under: -


"That the appellant is a private limited company engaged in the business as a dealer of Hero Motor Corp. It filed the return of income for A.Y.2014-15 on 30/09/2014 declaring an income of Rs.7018730/-. The return of income is supported by audited profit & loss account, trading account, balance sheet & other detailed connected therewith besides audit report u/s 44-AB. Gross turnover of the company is 10563.21 lacs & paid up capital of the company is 40.15 lacs besides reserve & surplus at Rs.240.85 lacs. Cash Profit of the company is at Rs.82.72 lacs. In pursuance to requisition all information

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called for from time to time were furnished. In the course of assessment proceeding, it was voluntarily submitted that interest on building term loan amounting to Rs.1882009/- may be capitalized as it has been omitted to be capitalized due to inadvertent oversight of chartered accountant Sh. Ramesh Babber while compiling P&L a/c, & Balance Sheet. However, this fact was readmitted vide letter dated 16/08/2016. The appellant company was assessed u/s 143(3) vide order dated 23/09/2016 on an income of Rs.9785350/- by making inter-alia the following disallowances:-

- Rs. 339450/- Out of expenses & Depreciation vide para 2 of A.O.
- Rs. 168397/- Interest in term of section 14(a) of the Act.
- Rs. 344431/- Service tax Incentive receipt.
- Rs. 18,82,009/- Non capitalization of interest on borrowed funds for construction of building vide para 5 of A.O.
- Rs. 17211/- disallowance for service tax on incentive receipt.

Aggrieved with the order of A.O. the appellant went in appeal before CIT(A), Bhatinda, who vide order dated 13.12.2017 in ITA No. 24/16 17 A.Y. 2014-15 granted the following relief :

- 203281 Out of expenses and car depreciation
- 168397 interest in term of section 14(a) of the Act.
- 17211 Service tax incentive receipt.”
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5. Aggrieved with the order of CIT (A) the appellant went in appeal before Hon'ble ITAT Amritsar Bench, who vide order dated 08/04/2019 in ITA-93/ASR/2018 A.Y.2014-15 accepted the appeal thereby deleting disallowance of interest of Rs.344430/-. Thus all material disallowance made by A.O has been deleted except of Rs.1880009/- for which no appeal has ever been filed.

6. That the appellant company was all along under the bona-fide belief that the compliance of interne Tax Act-1961 has been made as certified by C.A. Ramesh Babber vide his report dated 01/09/2014. No doubt that bona-fide belief has turned out to be erroneous as far as interest of 1882009/- is concerned in respect of building term loan account. C.A. Ramesh Babber also furnished certificate dated 02/02/2018 before A.O.

In this way the appellant company has not withheld any such information relating to computation of income so as to attract penal provision of section 271(l)(c). No claim of expenses has been found to be false. The appellant has never been penalized for any other act or omission such as concealment or furnishing of inaccurate particulars of income since 1998 and in most of year assessment has been framed u/s 143(3).

Summary of two previous years is as under:

Assessment Year	Returned Income	Date of Return File	Assessed Income Order U/s 143(3)	Final Assessed Income Order U/s 254
2012-13	7336830.00	29/09/2012	8504379.00 dt. 12/03/2015	7336830.00 Dt03/10/2019
2033-34	7434650.00	27/09/2013	7936430.00 dt. 27/01/2016	7516218.00 Dt. 30/07/2019

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It is settled principle of law that penalty proceedings are independent of assessment proceedings and no pl u/s Section 271 (1) (c) can be imposed only because no appeal has been filed against addition / disallowance. The reliance is placed on following judgements:

- i. CIT vs, Ralblr Singh (2008 3014ITR 125 (P&H)*
- ii. CIT vs. Kamla Chemicals Industries (2005) 277 ITR 150 (P&H)*
- iii. CIT vs. Agro Chemicals India 288 ITR 149 (P&H)*
- iv. CIT vs. Ajaib Singh & Co, (2007) 253 ITR 630 (P&H)*
- v. CIT vs. Mehta Engineers Ltd. (2008) 300 ITR 308 (P&H)*
- vi. CIT vs. Sangrur Vanaspati Mills Ltd. (2008) 303 ITR 53 (P&H)"*

5. The ld. counsel also argued that it is a settled principle of law that even if some claim made by the Assessee is not allowed by the A.O., penalty cannot be imposed on that. The ld. Counsel also argued that the litigant should not suffer on account of mistake of the Counsel as here in this case, Assessee was totally dependent upon the counsel for filing of return and compiling the profit and loss account, balance sheet supported by a certificate of tax auditor but due to an inadvertent

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mistake of CA , the interest amounting to Rs. 18,82,009/- was not capitalized.

6. The ld. DR relied on the order of the Assessing Officer and the CIT(A).

7. In fact, as per ld. CIT(A), penalty levied by the Assessing Officer u/s Section 271 (1) (c) was not challenged /no appeal was filed. The ld. CIT(A) in his order has clearly given his findings on this as under:-

“.....However, the appellant has not filed any appeal on account of addition of Rs. 18,82,009/- u/s 36(1)(iii) of the Act. Since, the addition of Rs. 3,44,431/- made on account of disallowance of interest u/s 36(1)(iii) of the Act was allowed by the ITAT Amritsar Bench, hence, in my considered opinion, penalty imposed on such addition is not tenable in law and hereby deleted in appeal.

4.2 However, penalty levied on account of addition of Rs.18,82,009/- u/s 36(1)(iii) of the Act is hereby sustained in appeal. I therefore, direct the Jurisdictional AO to recompute the penalty order u/s 271(1)(c) of the Act and pass the appropriate order in accordance with law.”

8. We have considered the findings of the A.O. in the penalty order on this issue and the findings given by the CIT(A) in the appellate order. The ld. CIT(A) has clearly mentioned in his appellate order that since no

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appeal was filed on penalty levied on the addition of Rs. 18,82,009/- made u/s 36 (i)(iii) of the Act before him, therefore, he has not given any findings on this issue. We find that ld. CIT(A) has sustained the penalty on the addition of Rs. 18,82,009/- without giving any findings on this addition and similarly stated that since no appeal has been filed on this addition, therefore, he was not giving any findings on it.

9. During the proceedings before us, ld. counsel had argued that it was mistake on the part of the counsel/ CA of the Assessee that this inadvertent mistake was committed.

10. We have considered the written submissions and arguments of the counsel and findings of the ld. CIT(A) on this issue in the appellate order. We find that this issue has not been adjudicated by the CIT(A) because no appeal was filed on it owing to an inadvertent mistake the counsel / CA of the Assessee. Therefore, we are of this considered view that the Assessee / client should not suffer on account of the mistake of the Counsel. Accordingly, we refer this matter back to the CIT(A) to decide this issue of imposition of penalty on the addition of Rs. 18,82,009/- only. Accordingly, the matter is remanded back to the CIT(A) on this

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limited issue to decide it afresh, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly. The appeal of the Assessee is allowed for statistical purposes.

11. In the result, appeal is allowed for statistical purposes.

Order pronounced on 24/03/2025.


(**UDAYAN DAS GUPTA**)
Judicial Member


(**KRINWANT SAHAY**)
Accountant Member

“आर.के.”

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

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

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar