

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.437/Del/2024
[Assessment Year: 2016-17]**

Deputy commissioner of Income Tax, Circle-13(1), Room No.316A, 3 rd Floor, C.R. Building, I.P. Estate, New Delhi-110002	Vs	Logic Eastern (India) Private Limited, C-56/39, 5 th Floor, Sector-62, Noida, Uttar Pradesh-201301
		PAN-AAACL3539Q
Appellant		Respondent

Appellant by	Ms. Amisha S. Gupta, CIT(DR)
Respondent by	None

Date of Hearing	07.07.2025
Date of Pronouncement	07.07.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the Revenue is directed against the order of National Faceless Appeal Centre/Ld. CIT(A), New Delhi dated 06.12.2023 arising out of penalty order dated 27.06.2019 passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter 'the Act') pertaining to Assessment Year 2016-17.

2. None appeared on behalf of the assessee. This case was fixed for hearing on 08.04.2024, 24.10.2024, 18.03.2025 and 30.04.2025,, when no one appeared on behalf of the assessee company. Therefore, this appeal is being decided after hearing the ld. Sr. DR and on the basis of material available on record.

3. The grounds of appeal raised by the Revenue are as under:-

“That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty of Rs.1,79,05,055/- imposed u/s 271(1)(c) of the Income Tax Act, 1961.”

4. Brief facts of the case:- The assessee e-filed its return of income for AY 16-17 on 13.10.2016, declaring a total loss of Rs.3,95,34,835/-. The case was selected for scrutiny under CASS and a notice u/s 143(2), dated 08.08.2017 and 15.09.2017 was issued online to the assessee by the ACIT, Circle- 15(2), Delhi. The assessee was intimated that the return of income for AY 16-17 was selected for "limited scrutiny", *inter-alia* with the following issues identified for examination:

1. Whether sundry creditors are genuine.
2. Whether disallowance on account of non-deduction, short deduction or non-payment of TDS has been correctly shown in the return of income.

4.1. The AO on perusal of the ITR of the assessee for AY 16-17 noted that the assessee had reported sundry creditors of Rs.35,03,72,435/- as on 31st March 2016, and despite multiple reminders, the assessee furnished details of only Rs.30,25,83,893/- owed to M/s UKC Electronics Pvt. Ltd in this regard. The AO further noted that no details were furnished in respect of the remaining amount of Rs.4,77,88,542/-, despite multiple reminders issued to the assessee in this regard. In light of the above, the AO treated this amount as arising out of bogus purchases booked during the relevant financial year and disallowed u/s 37 of the Act by holding that they were not incurred for the purpose of the assessee's business. Further, the AO noted his satisfaction that the assessee has furnished inaccurate particulars of its income within the

meaning of section 271(1)(c) of the Income Tax Act and initiated penalty proceedings u/s 271(1)(c) of the Act.

4.2. Further, the assessee submitted the details of amount to be disallowed u/s 40(a)(ia) of the Act for non-deduction of TDS on certain payments amounting to Rs.63,65,815/- and explained as under:-

“This amount of Rs. 63,65,815/- has also been disallowed by the assessee in its computation of income furnished in this regard and as a result, the total income (loss) reported by the assessee under the head "Profits and gains from business or profession) was a loss of Rs.3,34,48,430/- after adding back the said amount of Rs.63,65,815/- u/s 40(a)(ia). However, the said amount has not been disallowed by the assessee in his ITR. As a result, a greater loss has been reported in the ITR.”

4.3. In light of the submissions of the assessee, the AO disallowed the sum of Rs.63,65,815/- and added to the returned income of the assessee u/s 40(a)(ia) of the Income Tax Act, 1961.

4.4. Further, the AO held that the assessee has furnished inaccurate particulars of its income within the meaning of Section 271(1)(c) of the Income Tax Act and initiated penalty proceedings accordingly

4.5. Accordingly, notice u/s 274 read with section 271 was issued to the assessee on 22.12.2018, fixing the case for hearing on 30.01.2019. However, as per the AO, nobody attended the proceedings and neither any submission or adjournment was filed. A fresh opportunity was also given to the assessee by the AO vide show cause notice u/s 271(1)(c) dated 03.06.2019 fixing the case for hearing on 12.06.2019 but the same remained undelivered. The AO further noted that in spite of these efforts, on the day of hearing neither any one attended the proceedings nor any written submission was submitted till the date of order.

4.6. The AO in view of the fact that the assessee did not comply during the penalty proceedings held that the assessee had no explanation/submission to offer at the time of assessment proceedings as well as in the penalty proceedings and he therefore proceeded to complete the penalty proceedings on the basis of material available on record. Further, the AO noted that *"explanation appended to section 271(1)(c) of the Income Tax Act, 1961 indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The object behind the enactment of section 271(1)(c) of the Income Tax Act, 1961, read with explanations indicates that the section has been enacted to provide for a remedy for loss of revenue. The penalty under those provisions is civil liability. Willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C."*

4.7. Thereafter, the AO relied upon various case laws in support of the proposition that penalty u/s 271(1)(c) is civil liability and for attracting such civil liability, willful concealment is not an essential ingredient as is case in the matter of prosecution u/s 276C of the Act. The AO also observed that had the case not been selected for scrutiny, the assessee would have got advantage by skipping both the addition and therefore mala-fide intention of the assessee behind it could not be denied in this case. The AO also further held that the assessee had furnished inaccurate particulars of income for which it did not have any corroboratory evidence and the mistake on part of the assessee could not be said to be *bona-fide* one.

4.8. Thereafter, the AO relying on the decision of Hon'ble Apex Court in the case of Union of India vs. Dharmendra Textile Processors 166 taxmann 65 (SC), judgement of Hon'ble Delhi Court in the case of CIT vs. Zoom Communications Pvt. Ltd. 327 ITR 51 and the decision of Hon'ble Supreme Court in the case of K. P. Madhusudhan vs. CIT 251 ITR 99 held the appellant in default of furnishing inaccurate particulars of its income in respect of the said additions made. Accordingly, the A.O. vide impugned order levied penalty u/s.271(1)(c) of the I. T. Act amounting to Rs. 1,79,05,055/-. The relevant extract of the penalty order levying the penalty in para 4.2 to 5 is reproduced as under:-

4.2. It is pertinent to mention here that had the case not been selected for scrutiny, the assessee would have got advantage. Malafide intention of the assessee behind it cannot be denied in this case. It is a matter of fact that the assessee has furnished inaccurate particulars of his income, for which he did not have any corroboratory evidence. The mistake on part of the assessee cannot be said to be bonafide one. This was a deliberate step on the part of the assessee to conceal the income. Certainly, it is the duty of the assessee to verify the particulars furnished by him and ensure that the particulars furnished are indeed accurate. The onus is on the assessee to establish that it had not concealed his income, but the assessee has failed to do so. This act of the assessee clearly comes under the purview of furnishing inaccurate particulars within the meaning of explanation 1 to the subsection (1) of the section 271(1)(c) of the Income Tax Act.

4.3. Reliance is also placed on the judgement of Hon'ble Delhi High Court in CIT vs. Zoom Communications Pvt. Ltd., 327 ITR 51 which reads as under:-

"It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect in law is mala fide, Explanation 1 to section 271(1)(c) would come into play and work to the disadvantage of the assessee

The court cannot overlook the fact that only a small percentage of the income tax returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but

is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it would be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a license to unscrupulous assesses to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self assessment under section 143(1) of the Income-tax Act, 1961 and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a malafide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have!

4.4. *The observations of the Hon'ble Delhi High Court highlight the importance of scheme of scrutiny assessment being administered by the CBDT, wherein very small percentage of returns are picked up for scrutiny and therefore, any omission/wrong claim therein would mean loss of due Revenue to the Government in a situation that the case does not fall under the scrutiny guidelines. This is to mean that the deterrence for filing inaccurate particulars in the return of income has to be served by imposition of penalty as envisaged in the Income-tax Act, 1961.*

4.5 *In the case of Thakur Vs. Hari Prasad vs CIT (1987) 167 ITR 603 (AP), it was held that the act of conduct of an assessee to conceal the income is an inferential fact to be drawn or deduced from totality of facts and circumstances. Evidence may be oral, documentary and circumstantial. Adduction of evidence during the proceedings to impose penalty is not in the strict sense of the term 'evidence' under the Indian Evidence Act which does not apply to proceedings under the Act.*

4.6. *In the case of K.P. Madhusudan Vs. CIT, 251 ITR 99, the Hon'ble Supreme Court has held that the explanation of the assessee for the purpose of avoidance of penalty must be an acceptable explanation; it should not be a fantastic or fanciful one. As indicated above, the consequence follows as a matter of law. The burden is on the assessee. If he fails to discharge that burden, the presumption that he had concealed the income or furnished inaccurate particulars thereof is available to be drawn. The principal logical import of the Explanation is to shift the burden of proof from the Revenue on to the*

assessee. The rebuttal must be on materials relevant and cogent. It is for the fact-finding body to judge the relevancy and sufficiency of the materials. If such a fact-finding body, bearing the aforesaid principles in mind, comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact, and no question of law arises. As observed earlier, the initial burden is on the assessee. Once the initial burden is discharged, the assessee would be out of mischief unless further evidence is adduced. It is plain on principle that it is not the law that the moment any fantastic or unacceptable explanation is offered, the burden placed would be discharged and the presumption rebutted

5. In view of the reasons mentioned in preceding paras and judicial pronouncements, I am, therefore, satisfied that this act of assessee was a deliberate act to furnish inaccurate particulars of the income.

5. Aggrieved with the said order, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) in para 5 observed that the assessee did not respond to the hearing notices nor filed any written submissions and therefore he was left with no alternative but to decide this appeal on the basis of grounds of appeal raised along with statement of facts in the Form No.35. The ld. CIT(A) considering the above facts noted that it needs to be ascertained as to whether the assessee can be held to be in default of furnishing inaccurate particulars of its income in respect of the said additions made in the assessment order. The Ld. CIT(A) noted that merely because the assessee did not file the details in respect of sundry creditors amounting to Rs.4,77,88,542/-, it could not be concluded that the same is arising on account of bogus purchases. The Ld. CIT(A) also observed that the AO had not brought nothing on record which could show at least prima facie that the assessee made bogus purchases thereby bogus sundry creditors of Rs.4,77,88,542/- was created. The Ld. CIT(A) was of the view that if the AO accepts the sales shown by the assessee in the profit & loss account and unless and until, it was established by the AO that it was complete bogus purchase in the sense that the assessee has

debited purchase which was not genuine purchase for the purpose of reducing the profit of the company and it cannot be a case that only purchase is treated as bogus accepting the corresponding sales credited by the assessee into profit & loss account. The Ld. CIT(A) also took note of the fact that it was evident from record that the assessee was not regular in making compliance to various notices issued either during the course of assessment proceedings or penalty proceedings or even at the appellate stage and therefore it was possible that the assessee failed to furnish the details in respect of remaining sundry creditors. In view of these facts, the Ld. CIT(A) held that merely non-furnishing of details of sundry creditors of Rs.4,77,88,542/- do not amount to furnishing of inaccurate particulars of income.

5.1. Regarding the disallowance of Rs.63,65,815/- u/s 40(a)(ia) of the Act, the ld. CIT(A) held that the same may be inadvertent error on the part of the assessee because the same was disallowed by the assessee in its computation of income but the same was not disallowed in the return of income filed and the same could not amount to furnishing of inaccurate particulars of income.

5.2. Thereafter, the ld. CIT(A) relying upon the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ld. Vs State of Orissa (1972) 83 ITR 26(SC) held that the assessee could not be held in default for furnishing of inaccurate particulars of income in respect of above two additions made in the assessment order and therefore the assessee was not liable for levy of penalty u/s 271(1)(c) of the Act. Accordingly, the ld. CIT(A) deleted the penalty of Rs.1,79,05,055/-.

6. Aggrieved with the said order of the Id. CIT(A), the Revenue is in appeal before us.

7. The Id. DR submitted that the assessee failed to submit the complete details of sundry creditors of Rs.4,77,88,542/- and therefore the Id. CIT(A) erred in deleting penalty because when the assessee could submit the details of the sundry creditors of Rs.30,25,83,893/- and therefore the assessee deliberately did not submit the complete details of the balance sundry creditors of Rs.4,77,88,542/- despite multiple notices issued by the AO in this regard, which amounts to furnishing of inaccurate particulars of income.

7.1. The Ld. DR further submitted that similarly, the conduct of the assessee in not disallowing a sum of Rs.63,65,815/- u/s 40(a)(ia) of the Act in the return of income despite disallowing the same in its computation of income cannot be termed as bona-fide error but a deliberate attempt to suppress its taxable income by furnishing inaccurate particulars of income.

7.2. Therefore, the Id. Sr. DR pleaded that the deletion of penalty by the Ld. CIT(A) may be reversed and the action of the AO in levying the penalty be upheld.

8. We have heard the Id. Sr. DR and perused the material available on record. In this case, the assessee filed its return of income for AY 16-17 on 13.10.2016, declaring a total loss of Rs.3,95,34,835/-. The case was selected for limited scrutiny under CASS and the reasons were (i) Whether sundry creditors are genuine and (ii) Whether disallowance on account of

non-deduction, short deduction or non-payment of TDS has been correctly shown in the return of income. During assessment, the AO detected the wrong claim of the assessee on both counts i.e. genuineness of the sundry creditors to the extent of Rs.4,77,88,542/- and on the disallowance on account of non-deduction of the TDS amounting to Rs.63,65,815/- in the return of income. It is seen that in respect of sundry creditors out of sundry creditors of Rs.35,03,72,435/- as on 31.03.2016, the assessee furnished the details only of Rs.30,25,83,893/- owed to M/s UKC Electronics Pvt. Ltd. Further, no details in respect of remaining sundry creditors amounting to Rs.4,77,88,542/- was furnished despite multiple reminders issued to the assessee in this regard. Therefore, in the given facts of the case, the AO was correct in treating this amount as arising out of bogus purchases as the onus is on the assessee to satisfy the claim made by it in its return of income. The reasoning of the ld. CIT(A) that the assessee being non-complied and therefore, the details was not submitted is not acceptable and this will set a wrong precedent if such conduct of the assessee is allowed to be accepted. Moreover, in absence of any details, no enquiry can be made by the AO regarding the genuineness of the purchases as stated by the Ld. CIT(A). Further, this is a case of company, where accounts are audited and the assessee was aware of the issue of verification of genuineness of the sundry creditors during the assessment proceedings and therefore non-furnishing of the said details during the assessment proceedings and also by being non-compliance and not furnishing the said details during the penalty proceedings, appellate proceedings before the Ld. CIT(A) and before us, confirms that the action of the AO to consider this amount as

arising out of bogus purchased booked during the relevant financial year cannot be negated. Similarly, conduct of the assessee shows that the non-disallowance of Rs.63,65,815/- u/s 40(a)(ia) of the Act in its ITR despite disallowing in its computation cannot be termed as inadvertent error on the part of the assessee. In fact, in this case, the AO has rightly relying upon the decision of the Hon'ble Delhi High Court in the case of CIT vs Zoom Communications Pvt. Ltd. (supra), has levied the penalty by observing the findings of the Hon'ble High Court that when small percentage of returns are picked up for scrutiny and therefore any omission/wrong claim would mean loss of due revenue to the government and therefore the deterrence of filing inaccurate particulars in the return of income has to be served by the imposition of penalty as envisaged in the Income Tax Act, 1961. Therefore, the action of the Ld. CIT(A) in deleting the penalty of Rs.1,79,05,055/- is reversed and the action of the AO in levying the penalty is confirmed.

9. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 07TH July, 2025.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Dated 07.07.2025.

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER**

Asst. Registrar,
ITAT, New Delhi,