

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.1298/Bang/2014
Assessment year : 2009-10

The Deputy Commissioner of Income Tax, Circle 11(3), Bangalore.	Vs.	M/s. e-Cosmos India Pvt. Ltd., Golden Enclave, A1 Tower, 7 th Floor, Old Airport Road, Bangalore – 560 017. PAN : AABCE 3269K
APPELLANT		RESPONDENT

CO No.36/Bang/2015 [in ITA No.1298/Bang/2014]
Assessment year : 2009-10

M/s. e-Cosmos India Pvt. Ltd., Golden Enclave, A1 Tower, 7 th Floor, Old Airport Road, Bangalore – 560 017. PAN : AABCE 3269K	Vs.	The Deputy Commissioner of Income Tax, Circle 11(3), Bangalore.
APPELLANT		RESPONDENT

Revenue by	:	Dr. Shankar Prasad K., Jt. CIT(DR)
Assessee by	:	Shri Raj Kumar Shanbhogue, CA

Date of hearing	:	18.06.2015
Date of Pronouncement	:	29.06.2015

ORDER

Per N.V. Vasudevan, Judicial Member

ITA No. 1298/B/2014 is an appeal by the Revenue against the order dated 30.6.2014 of the CIT(Appeals)-I, Bangalore relating to assessment year 2009-10. In this appeal, the Revenue has challenged the order of CIT(Appeals), whereby he cancelled the order of the Assessing Officer imposing penalty u/s. 271(1)(c) of the Act.

2. Penalty u/s. 271(1)(c) of the Act was imposed by the Assessing Officer under the following facts. The assessee is a company, engaged in the business of computer software development. The assessee filed its return of income for the A.Y. 2009-10 belatedly on 18.10.2010. In the return of income so filed, the assessee claimed deduction u/s. 10A of the Act in respect of profits derived from export of computer software. U/s. 10A(1A) proviso, no deduction u/s. 10A will be allowed to the assessee, who does not furnish return of income on or before the due date specified u/s. 139(1) of the Act.

3. The AO noticed that the assessee had claimed deduction u/s. 10A of the Act at Rs.61,16,242. Relying on the provisions of proviso to section 10A(1A) and also for the reason that Form 56F in the prescribed proforma which is necessary for claiming deduction u/s. 10A had not been filed by the assessee, deduction u/s. 10A was disallowed by the AO. The AO also

noticed that in the P&L account, administrative selling and other expenses debited by the assessee were a sum of Rs.3,66,31,715. In the course of assessment proceedings, the director of the company appeared before the AO. He was asked to produce bills and vouchers in support of expenses so debited. The director could not produce bills or vouchers. The AO therefore disallowed a sum of Rs. 10 lakhs out of expenses debited in the P&L account.

4. In respect of disallowance of deduction u/s. 10A of the Act and disallowance of Rs.10 lakhs of administrative selling and other expenses, the AO initiated penalty proceedings against the assessee and by an order dated 28.6.2012 came to the conclusion that the assessee had filed inaccurate particulars of income and concealed particulars of income and imposed penalty equal to 100% tax sought to be evaded.

5. Before the CIT(Appeals), the assessee firstly submitted the reason why the return of income was not filed on or before the due date u/s. 139(1) of the Act. The assessee had explained before the CIT(A) in an affidavit that the assessee faced several odds due to crash in the business following economic meltdown in the USA where its business was concentrated, leading to attrition in employment in the assessee's office in Bangalore due to desertion of employees seeking better opportunities elsewhere. There was a death in the family of Principal Officer and he could not attend the work several days leading to Finance & Accountancy sections not being

properly looked after. The director of the assessee had to look for a suitable auditor/counsel to enable representation before the income-tax authorities.

6. The assessee also explained that the denial of deduction u/s. 10A was owing to technical lapse and there could be no doubt that assessee was engaged in the business of computer software and had brought in to the country foreign exchange from such export. The assessee submitted that it had disclosed facts in its return of income and there could be no complaint of any concealment of particulars of income or furnishing of inaccurate particulars of income.

7. With regard to disallowance of Rs.10 lakhs out of administrative selling and other expenses, the assessee pointed out that disallowance was made by the AO purely on estimate basis and there was nothing on record to suggest that the assessee claimed bogus or excessive or personal expenses. The assessee submitted that there cannot be any adverse inference on this count also.

8. The assessee place reliance on the decision of the Hon'ble Supreme Court in the case of *CIT v. Reliance Petro Products Ltd.*, 322 ITR 158 (SC) wherein it was held that claiming a deduction which is disallowed will not necessarily lead to concealment of particulars of income, when all facts are disclosed and the claim is made for deduction. It was held that it was upto the authorities to accept or reject the claim for deduction. Merely

because the deduction claimed is not accepted, will not by itself attract imposition of penalty u/s. 271(1(c) of the Act.

9. The CIT(Appeals) on a consideration of the aforesaid facts, firstly came to the conclusion that there was a reasonable cause for the assessee in filing its return of income belatedly. The CIT(A) also held that disallowance of deduction u/s. 10A was made purely on technical grounds and there was no non-disclosure or inaccurate particulars of income furnished by the assessee. The CIT(A) also held that adhoc disallowance of Rs.10 lakhs out of administrative selling and other expenses were made only for non-production of bills & vouchers and there is no material on record to show that the expenses disallowed were bogus or personal in nature. The CIT(A) therefore was of the view that the assessee cannot be said to be guilty of having furnished inaccurate particulars of income or having concealed the particulars of income. Penalty imposed was cancelled by the CIT(A).

10. Aggrieved by the order of CIT(Appeals), the Revenue has filed the present appeal before the Tribunal.

11. The Id. DR reiterated the stand of the Revenue as contained in the grounds of appeal filed before the Tribunal. According to the Revenue, conduct of the assessee was contumacious. The assessee was guilty of non co-operation in the course of assessment proceedings. The assessee,

according to the Revenue, furnished inaccurate particulars by wrong claim of deduction u/s. 10A of the Act.

12. The Id. counsel for the assessee reiterated the submissions made before the CIT(A) and relied on his order.

13. We have considered the rival submissions. In our view, there is no merit in the appeal filed by the Revenue. The conduct of the assessee in filing return of income belatedly is sufficiently explained before the CIT(A). Perusal of the orders of the AO while concluding assessment u/s.143(3) of the Act shows that it was only the director who attended proceedings of assessment before the AO. In our view, the explanation so offered by the assessee deserves to be accepted. In this regard, the CIT(A) has also noticed the fact that the IT industry was undergoing a recession phase at the relevant point of time. The complaint that there was non-cooperative attitude on the part of the assessee is also not true. The non-cooperative attitude is cited by the Revenue in the context of assessee not having furnished any reply to the show cause notice issued u/s. 274 of the Act before imposing penalty u/s. 271(1(c) of the Act. In our view, this cannot be the basis to impose penalty as the penalty is with reference to concealment of particulars of income or furnishing of inaccurate particulars of income with reference to the original assessment proceedings.

14. As far as the complaint of the Revenue that the assessee furnished inaccurate particulars by making wrong claim of deduction u/s. 10A of the

Act is concerned, we find that this is not the basis on which deduction u/s. 10A was denied to the assessee. As rightly contended by the assessee, deduction u/s. 10A was denied only for technical reasons viz., return of income not having been filed on or before the due date u/s. 139(1) of the Act. In our view, therefore, the contentions put forth by the Revenue before us is unsustainable. In our view, the CIT(A) has rightly come to the conclusion that mere making of a claim for deduction u/s. 10A which is not allowed, cannot lead to the conclusion that assessee is guilty of having furnished inaccurate particulars of income or having concealed particulars of income. The CIT(A) has rightly placed reliance on the decision of the Hon'ble Supreme Court in *Reliance Petro Products Pvt. Ltd. (supra)*.

15. Even with regard to adhoc disallowance of administrative selling and other expenses of Rs.10 lakhs, disallowance has been made only for want of bills & vouchers. There is nothing on record to suggest that the expenditure disallowed was bogus, excessive or personal in nature. In light of the circumstances explained by the assessee with regard to affairs of its business having suffered setback, we are of the view that no adverse inference can be drawn against the assessee in respect of disallowance of Rs.10 lakhs.

16. For the above reasons, we are of the view that no interference is called for in the order of the CIT(Appeals) and the appeal by the Revenue deserves to be dismissed.

17. The assessee has filed the Cross Objection purely supportively of the order of the CIT(Appeals) cancelling the penalty u/s. 271(1(c) of the Act. In view of the dismissal of the Revenue's appeal, we are of the view that the Cross Objections does not deserve any adjudication and the same is dismissed as such.

18. In the result, the appeal by the Revenue and the CO by the assessee are dismissed.

Pronounced in the open court on this 29th day of June, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 29th June, 2015.
/D S/

Copy to:

1. Revenue
2. Assessee
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.