

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No.4099/MUM/2016
(Assessment Year 2009-10)

M/s.Wellmac Plastics,
A-302, Tulsi Tower,
MG Road, Goregaon(W),
Mumbai 400 062
PAN: AAAPW 5364M

..... Appellant

Vs.

The DCIT- 15(2),
Mumbai 400 020

.... Respondent

Appellant by : Shri Bhupendra Shah

Respondent by : Shri Durga Dutt

Date of hearing : 23/05/2017

Date of pronouncement : 23/05/2017

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2009-10 is directed against an order passed by CIT(A)-42, Mumbai dated 21/04/2016, which in turn, arises out of an order passed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') dated 29/01/2014.

2. In this appeal, assessee has raised the following Grounds of appeal.

" 1. In the facts and the circumstances of law, the Assessing Officer erred levying penalty U/S 271(1)(c) amounting to Rs.

1,16,137/- in respect of disallowance of interest on FD kept as bank guarantee with electricity dept and by way of disallowing deduction u/s. 80IB(4) by treating the labour charges as unexplained income.

2. In the facts and the circumstances of law, the Assessing Officer erred levying penalty u/s. 271(1)(c) in respect of additions amounting to Rs. 3,41,679/- instead of addition sustained by the Commissioner of Income Tax(A) amounting to Rs. 74,821/- on which penalty was initiated.

3. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming the same by disregarding several judgments cited.”

3. At the time of hearing, the Ld.Representative for the assessee has disputed the levy of penalty of Rs.1,16,137/- only in respect of the denial of deduction under section 80IB of the Act with respect to the interest on FDRs kept as bank guarantee with the electricity department for obtaining power connection. Ground No.2 above has not been pressed at the time of hearing, therefore, the same is dismissed as not pressed.

4. After hearing the rival parties, in our view, there is no concealment or furnishing of inaccurate particulars of income within the meaning of under section 271(1)(c) of the Act, qua the aforesaid disallowance, because it is a case where the claim for deduction has been found to be untenable. Mere disallowance of a claim by interpreting the provisions of a section does not justify the penalty under section 271(1)(c) of the Act unless it can be shown that the claim was either fanciful or non-bonafide. No such findings emerge from the orders of the authorities below and, therefore, in terms of the ratio of the judgment of the Hon'ble Supreme Court in the case of CIT vs. Reliance

Petroproducts Ltd., 322 ITR 158 (SC), the penalty levied under section 271 (1)(c) of the Act is hereby directed to be deleted. We hold so.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on conclusion of the hearing in the presence of both the parties on 23/05/2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 22/05/2017
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai