

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4924/Del/2013  
AY: 2009-10**

**ITA No. 5517/Del/2013  
AY: 2009-10**

**Samtel India Ltd.,  
501, Copia Corporate Suites,  
District Centre, Jasola,  
New Delhi-110025  
(PAN: AAACS0390N)  
(Appellant)**

**vs**

**ACIT,  
Circle 7(1),  
New Delhi.**

**(Respondent)**

**Appellant by:** Shri D.C. Garg, CA  
**Respondent by:** Smt. Anima Banwal, Sr. DR

**Date of hearing: 29.02.2016  
Date of pronouncement: 23.05.2016**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

In I.T.A. No. 4924/Del/2013, the grounds have not been pressed by the assessee, hence, the appeal stands dismissed.

2. I.T.A. No. 5517/Del/2013 has been preferred by the assessee against the order of the CIT(A)-X, New Delhi dated 30.4.2013 for assessment year 2009-10 on the following grounds of appeal:-

1. *That the Learned Commissioner of Income Tax (Appeals) X, New Delhi, has erred in law as well as*

*on facts and in circumstances of the case by wrongly appreciating the facts on the ground of opportunity to the assessee.*

2. *That the Learned Commissioner of Income Tax (Appeals) XIX, New Delhi, has erred in law as well as on facts and in circumstances of the case by upholding the levy of penalty under section 271(1)(c), by the AO, without considering the material available on record.*
3. *The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”*

3. The assessee company is a public limited company engaged in the business of trading of television picture tubes. This appeal is preferred against action of the Commissioner of Income Tax (Appeals)-X, New Delhi in upholding penalty levied by the Assessing Officer under section 271(1)(c). Briefly stated, facts of the case are that primary business of the assessee company was to manufacture 'black & white' picture tubes for the televisions. As the market for black & white televisions declined sharply, the assessee was forced to shut down the manufacture of black and white picture tubes in financial year 2005-06. During the Financial Year 2007-08, in order to continue in the business, the assessee company decided to set up another project for manufacture of 'metal parts' for which the company purchased some machinery to the tune of Rs. 3.34 crores.

4. During the year under consideration, financial position of the company worsened further and finally, the assessee company dropped the idea of putting up the new project. Accordingly, the management decided to 'write off' the machinery so purchased after retaining estimated scrape value of the machinery in the books of account. The decision of the management to write off the project was disclosed in the Annual Accounts of the company which got approval of the directors and shareholders in the Annual General Meeting (AGM). During the course of assessment and appellate proceedings, it was submitted by the assessee that "the capital work in progress" was written off during the year as 'Metal Part Project' had become un-viable. The machinery purchased for metal project had not been capitalized and was shown under the head 'Fixed Assets' as capital work in progress. No depreciation was ever claimed. Since the machine was not capitalized and had to be eventually written off, the Assessee claimed the loss as a revenue loss. The Assessing Officer accepted that there was a loss but declined to accept it as a revenue loss.

5. Subsequently, penalty proceedings u/s 271(1)(c) of the Income tax Act, 1961 were initiated on the issue of write off of

capital work-in-progress as afore said. The Assessing Officer issued notice dated 18-04-2012 fixing the date of hearing for 24-04-2012 which was received by the assessee on 24th itself. Vide Letter dated 27-04- 2012, the assessee sought time for filing a reply but the AO proceeded to pass the penalty order without affording further time to the assessee and imposed a penalty of Rs. 1,02,53,238/- for making a wrong claim in the return of income.

6. Aggrieved, the assessee approached the First Appellate Authority who confirmed the penalty by holding that on the facts of the case it was clear that the claim was made by the assessee with an intention to reduce tax incidence.

7. Now, the assessee has approached the Tribunal and assailed the confirmation of penalty in the impugned order. The Ld AR drew our attention to page 38 of the paper book containing a copy of 'Schedule - 9 - Other Expenses' of the audited financial statements and pointed out that the write off of the capital work in progress was fully and correctly disclosed in the annual accounts of the company. The Ld. AR also drew our attention to Page 40 of the Paper Book and submitted that it is also clearly evident from Point no. 3 of the Notes to the Accounts

of the audited Balance Sheet that the assessee company had disclosed the same fact by way of note also that *“the management has decided to write off the expenditure in the Capital work in progress amounting to Rs. 329.4 lacs and in the preoperative account of Rs. 2.42 lacs.”* It was further submitted that the AO, while framing original assessment, has not recorded any adverse finding about the genuineness or accuracy of the claim. He has only recorded that write off of capital work in progress is a capital expenditure, which cannot be allowed as revenue expenditure. It was further submitted that in the present case, the assessing officer himself has admitted that there is a loss but did not accept this loss as revenue expenditure but has treated this loss as a capital expenditure. Hence it is debatable issue on which no penalty u/s 271(1)(c) of the Act was imposable. He submitted that the penalty ought to be deleted.

8. The Ld. DR supported the orders of the authorities below and emphasized that since the assessee was not pressing for addition in the quantum appeal before the ITAT, it was obvious that the assessee accepted that it had furnished inaccurate particulars of income and, therefore, the penalty order ought to be upheld.

9. We have heard the rival submissions and perused the material on record. We find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. It is also trite law that penalty proceedings are distinct and different from assessment proceedings. Finding in the assessment proceedings are not conclusive. The entire material available should be considered afresh by the Assessing Officer before imposing penalty u/s. 271(1)(c). In this regard, we note that assessee has duly disclosed the fact of write off of capital work in progress in the audited financial statements by way of a note and hence, there cannot be any allegation of furnishing of inaccurate particulars. It is not the case that the write off has been found to be bogus. The AO has himself accepted that it was a loss, albeit a capital loss, rather than a revenue loss as claimed by the assessee. In the case of CIT vs. Vamchampongons & Agro Produce (2006) 200 CTR (Del) 259, Hon'ble Jurisdictional High Court held that *"Assessee having shown the income from sale of debentures as capital gains, penalty under s. 271(1)(c) could not be levied on the basis that the AO has assessed the said income as business income and not as capital gains."* In another case CIT vs. Krishna

Maruti Ltd. (2011) 330 ITR 547 (Del)], Hon'ble Delhi High Court has opined that "*Assessee having claimed certain expenditure as revenue expenditure which was disallowed as capital expenditure, the claim being debatable, penalty under s. 271(l)(c) is not leviable.*"

10. On the facts of the case, we are of the opinion that the decision of the Hon'ble Apex Court in CIT vs. Reliance Petro Products Ltd. in Civil Appeal No. 2463 of 2010 order dated 17.3.2010 is squarely applicable. In this case it has been held that the law laid down in the Dilip Shroff case {291 ITR 519 (SC)} as to the meaning of word '*concealment*' and '*inaccurate*' continues to be a good law because what was overruled in the Dharmender Textiles case was only that part in Dilip Shroff case where it was held that *mensrea* was a essential requirement of penalty u/s 271(1)(c). The Hon'ble Apex Court also observed that if the contention of the revenue is accepted then in case of every return where the claim is not accepted by the Assessing Officer for any reason, the assessee will invite the penalty u/s 271(1)(c). This is clearly not the intendment of legislature. The Hon'ble Apex Court in the matter of CIT Vs Reliance Petroproducts Pvt.

Ltd [322 ITR 158] held that where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. A mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee.

11. Respectfully following the ratio laid down by the Hon'ble Apex Court as afore mentioned, we set aside the impugned order and direct the AO to delete the penalty imposed u/s 271(1)(c ) of the Income Tax Act, 1961.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 23rd May, 2016.

**Sd/-**

**(G.D. AGRAWAL)  
VICE PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: the 23rd May, 2016

‘GS’

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1. Appellant
2. Respondent
3. CIT 4. CIT(A)
4. DR, ITAT

By Order

ASSTT. REGISTRAR