IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C', NEW DELHI

BEFORE
SHRI G. D. AGRAWAL, HON'BLE VICE PRESIDENT
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

I.T.A. No.6119/Del/2013
(Assessment Year 2007-08)

Intertec, Farm No.8, Khasra No.56/23/2, Dera Mandi Village Mehrauli, New Delhi -110 047 GIR / PAN :AAAFI 2013H	Vs.	DCIT, Circle 24(1), New Delhi
(Appellant)		(Respondent)

Appellant by :Shri M. P. Rastogi, Adv.
Shri P N Shasstry, CA
Respondent by :Shri T Vasanthan, Sr. DR

Date of hearing: 28.06.2016
Date of Pronouncement: 03.08.2016

ORDER

PER BEENA A. PILLAI, JM:

The present appeal has been filed by the assessee against the order dated 18.09.2013 passed by Ld. CIT(A) XXIII, New Delhi for the Assessment Year 2007-08 on the following grounds of appeal:

"1 The learned CIT [A] has erred in confirming penalty of Rs. 6,19,712 by treating a bona fide computational mistake as a willful furnishing of inaccurate particulars of income.

2 The learned CIT [A] has erred in concluding that the assessee has disclosed full particulars of income in his computation of taxable income, the documents accompanying the physical return and the information furnished during the assessment proceedings and has not filed any inaccurate particulars.

3 That the above grounds are independent and without prejudice to each other.

2. Return was filed by the assessee on 30th October, 2007 declaring NIL income. Assessment u/s 143(3) was completed on 07.12.209 at an income of Rs.18,41,094/-. During the course of assessment proceedings, it was noted by the Ld. A.O. that while claiming deduction u/s 80-IC, assessee has also included income on account of interest, consultancy and house property income to the tune of Rs. 10,26,094/-, Rs.80,000/- and Rs.7,33,000/- respectively which were not eligible items for claiming deduction under this section. Therefore, Ld. A.O. held that, Assessee has filed wrong particulars of income and initiated penalty proceedings u/s 271 (1)(c) of the Act.

During the course of penalty proceedings, assessee submitted before the Ld. A.O. that proceedings initiated be kept in abeyance till the disposal of pending appeal before the CIT(A). It was noted by the Ld. A.O. that Ld. CIT(A) XXII, New Delhi, had dismissed the appeal of the assessee on 29.12.2009. Ld. A.O. held that assessee failed to bring on record any evidence to justify the claim of deduction u/s 80-IC, on the items of income booked under the heads-interest, consultancy and house property and the assessee was not eligible to claim deduction u/s 80-IC as per provisions of Income-tax Act, 1961. It was thus held by the Ld. A.O. that assessee has deliberately

furnished inaccurate particulars of income in violation of provisions of section 271 (l)(c) of the IT Act,1961 and imposed a penalty of Rs.6,19,712/- being the 100% of the tax sought to be evaded.

3. Aggrieved by the order of the Ld. A.O., the assessee preferred appeal before the Ld. CIT(A).

4. Ld. CIT(A) following the decision of Hon'ble Delhi High Court in the case of Zoom Communications reported in 327 ITR 510 and the case of Lekh Raj Lalwani reported in 16 ITR 320 sustained the penalty of Rs.6,19,712/-, imposed by the A.O. on the appellant u/s 271(1)(c) of the Act, since the assessee has given no evidence to prove that he error was a bona fide mistake.

5. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

6. Ld. A.R. submitted that assessee had two units, at Greater NOIDA and Pantnagar. He submitted that assessee used to claim deduction u/s 80-IB at Greater NOIDA unit and deduction u/s 80-IC was claimed from income earned from Pantnagar unit at Uttaranchal. He submitted that during the year under consideration, income from Pantnagar unit was Rs.22,950,041/- (the working has been given at page 4 of the Paper Book) and as the net income from Greater NOIDA unit was a loss, no deduction u/s 80-IB was claimed (Page 3 read with page 4 of Paper Book).

6.1 Ld. A.R. submitted that in the computation of income placed at page 2 of Paper Book, the assessee has

restricted the deduction u/s 80-IC to the gross income. He also referred to the reply dated 30.11.2009 placed at page 29 of the Paper Book wherein the assessee has submitted before the Ld. A.O. as under:

> *"Deduction u/s 80-IC will exclude interest income, consultancy income and income from house property. Accordingly, the same will get reduced by Rs.18,41,094/-. However, please note that an amount of Rs.13,307/- being share of Pantnagar unit on account of partners personal use of telephone and conveyance has already been added back in Pantnagar unit's profit. The firm has rented out its factory at Greater NOIDA and accordingly its depreciation has been added back to the profit and gains. Since the building is in Greater NOIDA, no depreciation has been claimed by Pantnagar Unit and therefore, no deduction has been claimed u/s 80-IC on this amount The net income from house property is already excluded form deduction u/s 80-IC. Accordingly, the final deduction u/s 80-IC works out to Rs.1,80,02,488/-. Your honour is, therefore, requested to allow the same."*

7. On the contrary, Ld. D.R. submitted that the assessee has admitted the mistake vide letter dated 30.11.2009 and thus the penalty levied by the Ld. A.O. for filing wrong particulars of income must be sustained. He placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs N G Technologies Ltd. reported in 57 Taxmann.com 389. Ld. D.R. submitted that the ratio laid down by the Hon'ble Delhi High Court has been upheld by the Hon'ble Supreme Court in N G Technologies (in liquidation) Vs. CIT reported in 70 Taxmann.com 37. Ld. D.R. has placed reliance on the

decision of Hon'ble Jurisdictional High Court in case of CIT Vs HCIL Kalindee Arsspl reported in 37 Taxmann.com 37 in the written submission filed before us.

8. We have perused the submissions advanced by both the sides and the judgements referred to by Ld. D.R. On perusal of the computation of income placed a page 1 of the Paper Book, it appears that assessee has claimed deduction u/s 80IC only in respect of Pantnagar unit. Further, it is observed that the income from house property comprises of rent received from letting of factory building, which forms part of block of assets. Income earned by the assessee under the head 'interest income' and 'consultancy income'. The assessee at page 29 of the Paper Book, ha annexed letter dated 30.11.2009 addressed to the Ld. A.O., which reads as under:

"Intertec/2/2009-10/
November 30, 2009

Income Tax Officer.
Circle 24(4),
C.R. Building, IP. Estate,
NEW DELHI.

Sub: Assessment Proceedings for A,Y. 2007 -08.

Madam,
Please refer to your honour's show Cause Notice dated 24th November, 2009. Please note that deduction u/s. 80lC has been claimed on profit of our Pantnagar Unit. A copy of notification and letter from SIDCUL have already been filed along with our letter dated 23rd September. 2009.

Deduction u/s. 80lC will exclude interest income, consultancy income and income from house property. Accordingly, the same will get reduced by Rs.18,41,094/-. However, please note that an amount of RS.13,307/-. being share of Pantnagar unit on account of partners' personal use of telephone and conveyance, has already been added back in Pantnagar unit's profit.

The firm has rented out its factory at Greater Noida and accordingly its depreciation has been added back to the profit and gains. Since the building is in Greater Noida, no depreciation has been claimed by Pantnagar Unit and therefore, no deduction has been claimed on this amount. The net income from house property is already excluded from deduction u/s. 801C. Accordingly, the final deduction u/s. 80IC works out to Rs.1,80,02,488/- . Your honour is, therefore, requested to allow the same. "

Please find enclosed herewith copy of value of fringe benefit tax of Rs.84,571/- on Rs.28,466/- fringe benefit tax is payable. The firm has paid Rs.30,000/- fringe bene.fit tax. Copies of F.B.T. paid tax challans (3 Nos.) are being produced in original for verification. Original TDS Certificates for Rs.5,05,744/- are also being produced in original for necessary verification

Hope you shall find the above in order.

Thanking you,

Yours faithfully,
For INTERTEC
Sd./-
Authorised signatory"

8.1 The above position has neither been disputed by the authorities below nor the Ld. D.R. In the computation, the assessee has included only the interest income and

income earned from consultancy, for the purpose of arriving a gross total income in computing deduction u/s 80IC of the Act. Thus, Ld. A.O. wrongly arrived at the conclusion that assessee has included rental income in the gross total income for the purpose of deduction u/s 80-IC of the Act. Ld. A.O. did not verify the submissions made by the assessee in letter dated 30.11.2009 (reproduced above).

8.2 The issue whether interest income could form part of gross total income, is debatable as the assessee is exclusively carrying on business which is eligible for deduction u/s 80IC of the Act.

8.3 As far as consultancy income is concerned, it cannot be considered to have been derived from the manufacturing activity, so as to qualify for deduction u/s 80-IC of the Act. The assessee had made a wrong claim in respect of consultancy income. The decisions relied upon by the Ld. D.R. in the case of CIT Vs ACIL Kalindee Arsspl reported in 2013-TIOL-617-H.C.-DEL-IT and CIT Vs N G Technologies Ltd. reported in (2015) 57 Taxmann.com 389 (Del.) are on a different footing. Hon'ble High Court in CIT Vs HCIL Kalindee ARSSPL (supra) held as under:

> *"++ penalty under Section 271(1)(c) of the Act is imposed when an assessee has concealed his income or furnished inaccurate particulars. In terms of the explanation quoted above, we have to examine whether the case falls within sub-clause (A) or (8) and the effect thereof. The assessee had made a wrong claim for deduction under Section 80lA and, therefore, had furnished inaccurate particulars as the claim was*

not admissible. Sub-clause (8) of the explanation is, therefore, applicable and we have to examine the two conditions whether: (1) The assessee has been able to show that the explanation was bona fide; and (2) Facts and material relating to computation of his income had been disclosed. Onus of establishing that the assessee satisfied the two conditions is on him i.e. the assessee;"

8.4 The explanation submitted by the assessee vide letter dated 30.11.2009 has not found to be false by the authorities below. Respectfully following the ratio laid down in HCIL Kalindee Arsspl (supra), we are of the considered opinion that penalty cannot be levied in respect of income from house property. Hon'ble Supreme Court in case of CIT Vs Reliance Petro Products Ltd. reported in 322 ITR 158 (S.C.) has held that for initiating penalty u/s 271(1)(c) for making a claim which cannot be sustained in law, will not amount to furnishing of inaccurate particulars. Hon'ble Supreme Court held as under:

"(i) S. 271 (1) (c) applies where the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income". The present was not a case of concealment of the income. As regards the furnishing of inaccurate particulars, no information given in the Return was found to be incorrect or inaccurate. The words "inaccurate particulars" mean that the details supplied in the Return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/ s 271 (1)(c).

(ii) The argument of the revenue that «submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income)) is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every Return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty u/ s 271 (1)(c). That is clearly not the intendment of the Legislature."

8.5 Respectfully following the ratio laid down by Hon'ble Supreme Court, we do not find it fit and proper to uphold the levy of penalty in the case before us. Accordingly, the penalty levied stands deleted in view of the discussion above.

9. In the result, assessee's appeal stands allowed.

Order pronounced in the open court on 03rd Aug., 2016.

Sd./-	Sd./-
(G. D. AGRAWAL)	(BEENA A. PILLAI)
VICE PRESIDENT	JUDICIAL MEMBER

Date:03.08. 2016

Sp.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	3/8/16		Sr. PS/PS
6	Kept for pronouncement	3/8		Sr. PS/PS
7	File sent to Bench Clerk	4/8		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			