

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.50 OF 2014

Palkhi Investments & Trading
Co. P. Ltd., Mumbai .. Appellant.
Vs.
The Income Tax Officer, Mumbai .. Respondent.

Mr. Vipul Joshi for the appellant.
Mr. Arvind Pinto for the respondent.

**CORAM : M. S. SANKLECHA &
A.K. MENON , JJ.**

DATED : 9TH JUNE, 2016

P.C. :

1. This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 24th July, 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal is in respect of penalty imposed under Section 271(1)(c) of the Act relating to the Assessment Year 2005-06.

2. The appellant has raised the following questions of law for our consideration:

(i) Whether, on the facts and the circumstances of the case, and in law, the Tribunal erred in

confirming the penalty of Rs.38,71,366/- levied under Section 271(1)(c) of the Income Tax Act, 1961 for alleged concealment of income with respect to the addition made u/s 41(1) of the Act on account cessation of liabilities ?

(ii) Whether, on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse in as much as the same is based on surmises, conjectures and suspicions, by taking into account incorrect, irrelevant and extraneous considerations while ignoring relevant material and considerations ?”

3. For the subject assessment year in the quantum proceedings, the Assessing Officer made an addition of Rs.1.26 crores to the total income declared by the appellant-assessee. This addition was in respect of trade liabilities which had ceased to exist and represented income in terms of Section 41(1) of the Act. Being aggrieved the assessee carried the issue in appeal to the Commissioner of Income Tax (Appeal), who confirmed the same. On further appeal, the Tribunal reduced the addition under Section 41(1) of the Act from Rs.1.26 crores to Rs.1.05 crores. The assessee carried the issue in further appeal to this Court. This

Court by order dated 16th November, 2010 dismissed the appeal interalia recording as under :

“The tribunal also recorded a finding that one of the creditors had even denied that any amount was due to it from the assessee. The tribunal has also recorded a finding of fact that some of the creditors named by the assessee were not found available at the addresses given by the assessee.”

The appellant filed SLP to the Supreme Court and the same was also dismissed. Thereafter review petition was filed before this Court seeking to review the High Court order dated 16th November, 2010. However, it was also dismissed on 4th August, 2015.

4. In the meanwhile, the Assessing Officer issued a notice seeking to impose penalty under Section 271(1)(c) of the Act in respect of the subject assessment year. This was for furnishing inaccurate particulars of income and concealing income in its return of income for subject assessment year. The Assessing Officer

by order dated 26th March, 2010 confirmed the notice interalia holding that assessee has shown non existing liability as still payable and it was only after due inquiry by the Assessing Officer during the course of assessment it came to light that the liability claimed to the extent of Rs.1.05 crores had ceased to exist. This led to the conclusion that the appellant had furnished inaccurate income leading to concealing of income. In the circumstances, minimum penalty of Rs.38.71 lakhs was imposed under section 271 (1)(c) of the Act upon the appellant.

5. On further appeal, the Commissioner of Income Tax (Appeals) by order dated 3rd February, 2011 upheld the order of the Assessing Officer imposing penalty. It held that in quantum proceedings it was held that trading liability ceased to exist during the subject assessment year. Thus the same led to Rs.1.05 crores being taxed, under section 41(1) of the Act. By not disclosing the same, the assessee had furnished inaccurate/incorrect/false particulars of income leading to concealment of income.

6. Being aggrieved the assessee preferred further appeal to the Tribunal. The impugned order of the Tribunal recorded the fact that the respondent- assessee was unable to prove genuineness of the amount shown as outstanding liabilities to the extent of Rs.1.05 crores. In the above view the assessee had to show on the basis of some evidence that it had a bonafide belief that the liability shown in the balance sheet was existing. During the course of hearing in penalty proceedings the Tribunal raised two queries, namely, evidence to prove as to when liability claimed to be subsisting arose for first time and other whether the respondent had received any letter from HDFC Ltd. stating that the amount due to M/s. Karamchand Chunnilal should be paid over to them as it had taken over its business as contended by the assessee. The impugned order records that the assessee was not in position to respond on both the issues. The impugned order further records that the claim made with regard to existing liabilities was not genuine claim as already established in quantum proceedings. Further the impugned order holds that it is established that the assessee had filed inaccurate particulars of claim of income resulting in concealing of income. In above view,

the tribunal by the impugned order upheld the order of the lower authorities imposing penalty of Rs.38.71 lakhs under Section 271(1)(c) of the Act.

7. Mr. Joshi, learned counsel appearing for the revenue attempted to once again take us over applicability of Section 41(1) of the Act to the facts of present case. We stopped him from doing the same. The applicability of Section 41(1) of the Act to the present facts stands concluded by the decision of this Court dated 16th December, 2010 from which a Special Leave Petition filed by the assessee before the Apex Court was also dismissed. Thereafter Mr.Joshi contended as under :

(a) the penalty proceedings are different from assessment proceedings and addition in quantum proceedings will not ipso facto result in imposition of penalty;

(b) the fact that liabilities was shown in their balance sheet was itself sufficient for purpose of establishing that the same was bonafide claim, consequently, no penalty is impossible; and

(c) For invocation of Section 271(1)(c) of the Act to impose penalty the sine qua non is a claim being made in the return of income. It

is stated that no claim was made in return of income, the disclosure of existing liabilities was only in the balance sheet. Therefore no penalty is imposable.

8. We have considered submissions made on behalf of appellants. There can be no dispute with regard to proposition that the penalty proceedings are different from assessment proceedings and mere addition in quantum proceedings would not ipso facto result in imposition of penalty. We find that in quantum proceedings which were taken up to the Supreme Court the Tribunal had recorded a fact that a creditor had denied that any amount was due to the appellant and one of them was also not found at the address given. Further, in penalty proceedings all three authorities have concurrently arrived at a finding of fact that the claim made by the assessee with regard to its outstanding liabilities for subject assessment year was false. These findings of fact are not shown to be perverse in any manner. The legal claim made before us that once a liability is shown in the balance sheet, it must follow that it is bonafide, is not understood. The liability shown in the balance sheet as existing is found to be false. The

assessee has to show the reason why he believed at the time he filed his balance sheet, it was true. No such attempt was even made. It was next contended that no claim was made in the return of income and therefore imposition of penalty under Section 271(1)(c) of the Act cannot be sustained. We are unable to appreciate the above submission. The fact is that in terms of Section 139 of the Act a return of income under the Act has to be filed along with the balance sheet and profit and loss account. In its absence the return of income is defective. Thus, same are to be considered as a part of the return of income. Further by showing a non existing liability as an existing liability, in the subject assessment year, the attempt was to escape offering of the ceased liability as income obliged to do under Section 41(1) of the Act. Thus, not offering to tax, the above ceased liabilities would by itself amount to furnishing inaccurate particulars of income leading to escapement of income from tax.

9. Moreover, as noted above, in the appeal filed by the appellant from the order of Tribunal in quantum proceedings under Section 260A of the Act, this Court while dismissing its

appeal interalia observed that the Tribunal had recorded a fact that one of the creditors have even denied that any amount is due. In the above circumstances, in view of concurrent decisions of all the authorities under the Act on facts no substantial question of law arises for our consideration.

10. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)