

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.958 OF 2017

Ventura Textiles Ltd. ... Appellant
Vs.
Commissioner of Income Tax-Mumbai City-11 ... Respondent

Ms Aarti Sathe for Appellant.
Mr. Akhileshwar Sharma for Respondent.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

Reserved on : MARCH 11, 2020

Pronounced on : JUNE 12, 2020

P.C.:

Heard Ms Aarti Sathe, learned counsel for the appellant / assessee and Mr. Akhileshwar Sharma, learned standing counsel, Revenue for the respondent.

2. This appeal has been preferred by the assessee under Section 260-A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) against the order dated 11.01.2017 passed by the Income Tax Appellate Tribunal, 'F' Bench, Mumbai ('Tribunal' for short) in I.T.A.No.5535/Mumbai/2014 for the assessment year 2003-04 filed by the assessee.

3. The appeal has been preferred by the assessee projecting the following questions as substantial questions of law:-

“A. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in upholding the levy of penalty u/s.271(1)(c) of the Act of Rs.22,08,860/- (Rupees Twenty-Two Lakhs Eight Thousand Eight Hundred and Sixty only) on account of disallowance of Rs.62,47,460/- (Rupees Sixty Two Lakhs Forty Seven Thousand Four Hundred and Sixty only) which was allowable as a deduction under the provisions of Section 37 of the Act?

B. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in not applying the ratio laid down by the Apex

Court in the case of CIT Vs. Reliance Petroproducts Private Limited reported in 322 ITR 158(SC), which was squarely applicable to the facts of the present case?

C. Whether on the facts and in the circumstances of the case and in law the Tribunal grossly erred in upholding the levy of penalty under Section 271(1)(c) of the Act without appreciating / considering that:

- (i) the appellant had not been found to have concealed particulars or furnished inaccurate particulars of its claims;
- (ii) the aforesaid claim could be allowed under Section 37 of the Act as incurred wholly and exclusively for the purposes of business;
- (iii) no income has been concealed / avoided as inter alia the settlement with JCT took place in assessment year 2003-2004, when the claim was made by the appellant under the provisions of Section 37 of the Act.

D. Whether on the facts and in the circumstances of the case the Tribunal ought to have held that the order passed under Section 271(1)(c) is bad in view of the fact that both at the time of initiation as well as at the time of imposition of the penalty the Assessing Officer was not clear as to which limb of Section 271(1)(c) was attracted?"

4. From the above it is evident that the core issue in this appeal is sustaining by the lower appellate authorities the imposition of penalty of Rs.22,08,860.00 under Section 271(1)(c) of the Act by the Assessing Officer on account of disallowance of Rs.62,47,460.00 claimed as a deduction under Section 36(i)(vii) of the Act on account of bad debt and subsequently claimed as a deduction under Section 37 of the Act as expenditure expended wholly and exclusively for the purpose of business.

5. For appreciation of the questions proposed, it would be apposite to deal with the relevant facts.

6. Respondent is an assessee under the Act (hereinafter referred to as 'the assessee' also), having the status of resident company. Assessment year under consideration is 2003-04. Assessee filed its return of income declaring total loss at

Rs.4,66,68,740.00. The case was selected for scrutiny assessment. During the assessment proceedings it was found amongst others that assessee had debited Rs.62,47,460.00 under the head 'selling and distribution expenses' and claimed it as bad debt in the books of account thus claiming it as a deduction under Section 36(1)(vii) of the Act. Subsequently it was found that the aforesaid amount was paid to M/s. JCT Ltd. as compensation for the supply of inferior quality of goods. Thus Assessing Officer held that the amount of Rs.62,47,460.00 claimed as bad debt was not actually a debt and therefore it was not allowable as a deduction under Section 36(1)(vii) of the Act. Assessing Officer further held that the said claim was also not admissible even under Section 37(1) of the Act, with the observation that payment made to M/s. JCT Limited was not wholly and exclusively for business purposes but for extraneous considerations. In view thereof, assessee's claim was rejected and Rs.62,47,460.00 was added back to the total income of the assessee. In the assessment order dated 28.02.2006 passed under Section 143(3) of the Act the total loss figure furnished by the assessee was lessened by the aforesaid amount and by two other amounts, rounding it off to Rs.3,53,48,680.00. Taking the view that assessee had furnished inaccurate particulars of income, Assessing Officer ordered that penalty proceedings under Section 271(1)(c) of the Act be initiated separately.

7. Following the same the Assessing Officer issued notice under Section 274 read with Section 271 of the Act on the same day i.e., on 28.02.2006 to the assessee to show cause as to why an order imposing penalty should not be made under Section 271 of the Act. It may however be mentioned that in the pertinent portion of the notice the Assessing Officer did not strike off the inapplicable portion. The pertinent portion reads as under:-

“ Whereas in the course of proceeding before me for the assessment year 2003-04 it appears to me that you:-

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* * * * * *
* * * * * *

have concealed the particulars of your income or furnished inaccurate particulars of such income.

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8. It appears that assessee had challenged the disallowance of bad debt along with other disallowances in the assessment order by filing appeal before the Commissioner of Income Tax (Appeals) who by order dated 14.11.2012 confirmed the disallowance of bad debt while deleting other disallowances.

9. In the penalty proceedings, Assessing Officer took the view that assessee's claim was not actually bad debt but represented payment made to M/s. JCT Limited which was also not incurred wholly and exclusively for the purposes of business. Had the case not been selected for scrutiny, income to the said extent would have escaped assessment. Thus, by the order dated 14.02.2014 Assessing Officer held that by making an improper and unsubstantiated claim of bad debt of Rs.62,47,460.00, the assessee had wilfully reduced its incidence of taxation, thereby concealing its income as well as furnishing inaccurate particulars of income. Therefore, invoking Section 271(1)(c) of the Act, the Assessing Officer imposed the minimum penalty being 100% of the tax which amount was quantified at Rs.24,99,200.00 which included penalty on another disallowance.

10. Aggrieved by such imposition of penalty, assessee preferred appeal before the Commissioner of Income Tax (Appeals)-18, Mumbai, briefly the First Appellate Authority or CIT (A) hereinafter. By the appellate order dated 07.08.2014, CIT (A) deleted the penalty on the other disallowance by holding that there was neither any concealment nor submission of inaccurate particulars by the assessee. Regarding penalty levied on Rs.62,47,460.00 claimed as bad debt in the assessment proceedings, CIT (A) held that assessee had made a wrong claim by submitting inaccurate particulars of income by claiming bad debt which was not actually a debt and also not an expenditure allowable under Section 37(1) of the Act. Thus it was held that the assessee had wilfully submitted inaccurate

particulars of income which had resulted into concealment. Therefore, penalty levied by the Assessing Officer on the amount of Rs.62,47,460.00 was upheld.

11. Assessee carried the matter in further appeal before the Tribunal assailing the decision of CIT (A) in upholding imposition of penalty in respect of the amount of Rs.62,47,460.00. By the order dated 11.01.2017, the Tribunal upheld the order of CIT (A) and rejected the appeal of the assessee. According to the Tribunal, it was rightly held by the CIT (A) that the assessee had made a wrong claim by submitting inaccurate particulars of income by claiming a bad debt which was not actually a debt and also not an expenditure allowable under Section 37(1) of the Act. Therefore, the finding recorded by the CIT (A) that the assessee had wilfully submitted inaccurate particulars of income which had resulted into concealment was affirmed.

12. Hence this appeal by the assessee.

13. Ms Sathe, learned counsel for the appellant submits at the outset that the notice issued to the petitioner under Section 274 read with Section 271 of the Act proposing to impose penalty was in printed format but the inapplicable portion therein was not struck off. Consequently, whether penalty was sought to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of such income was not indicated in the notice. This is a fundamental error which goes to the root of the matter and has vitiated the impugned order of penalty. However she admits that this point was neither pleaded nor argued before any of the lower authorities including the Tribunal. This point has been raised for the first time in appeal before the High Court. But she contends that this being a pure question of law touching upon jurisdiction, it can be raised even for the first time in the High Court in a proceeding under Section 260-A of the Act. In this connection, she has placed reliance on the following decisions:-

1. *CIT Vs. Jhabua Power Limited, (2013) 37 Taxmann.com 162 (SC);*

2. ***Ashish Estates & Properties (P) Ltd. Vs. CIT,***
(2018) 96 Taxmann.com 305 (Bombay)

13.1. Elaborating further, Ms Sathe submits that Section 271(1)(c) has two limbs i.e. concealing the particulars of income or furnishing inaccurate particulars of income. Concealment of particulars of income and furnishing inaccurate particulars of such income are two different things having separate connotation. Therefore, in the show cause notice issued under Section 274 read with Section 271(1)(c) of the Act it must be specifically indicated on what ground penalty is sought to be imposed, whether for concealment or for furnishing inaccurate particulars. Such a notice being in printed format, the inapplicable portion or limb of Section 271(1)(c) of the Act has to be struck off. Otherwise the notice would be invalid rendering the consequential orders wholly untenable being bad in law. This is the position in the present case, she submits. In this connection she has placed reliance on the following decisions:-

1. ***CIT Vs. SSA's Emerald Meadows, (2016) 73 Taxmann.com 248 (SC);***
2. ***CIT Vs. SSA's Emerald Meadows, (2016) 73 Taxmann.com 241 (Karnataka);***
3. ***CIT Vs. Samson Pernchery, (2017) 98 CCH 39 (Bombay);***
4. ***PCIT Vs. New Era Sova Mine, (2019) SCC OnLine Bom.1032;***
5. ***PCIT Vs. Goa Coastal Resorts & Recreation Pvt.Ltd., (2019) 106 CCH 0183 (Bombay);***
6. ***PCIT Vs. Shri Hafeez S. Contractor, ITA Nos.796 and 872 of 2016 decided on 11.12.2018.***

13.2. On a query by the Court as to whether in a case where the Assessing Officer directs initiation of penalty proceedings in the assessment order for furnishing inaccurate particulars of income but in the show cause notice it is not indicated whether penalty is sought to be imposed for furnishing inaccurate particulars of income by not striking off the inapplicable portion in the printed notice, would it

still vitiate the penalty proceeding and the consequential order of penalty, Ms Sathe, learned counsel for the appellant answers in the affirmative. She contends that penalty proceeding is initiated by the show cause notice. Therefore in the show cause notice it must be clearly mentioned as to why the penalty is sought to be imposed; the charge against the assessee must be already indicated. Failure to do so would reflect non-application of mind, thus vitiating the penalty proceedings and the consequential order of penalty.

13.3. In addition to the above, learned counsel for the appellant submits that assessee had made a bona-fide claim of deduction and had furnished all the necessary particulars. In the assessment proceedings, the Assessing Officer may not have agreed to such a claim and may have disallowed the same. Mere disallowance of a claim made bonafidely would not amount to concealment of particulars of income or furnishing inaccurate particulars of such income to warrant imposition of penalty under Section 271(1)(c) of the Act. To support such a contention, she has placed reliance on *CIT Vs. Reliance Petroproducts Pvt. Ltd.*, **322 ITR 158 (SC)** and on a few other cases.

13.4. Summing up, learned counsel for the appellant submits that the questions proposed are substantial questions of law which arise from the impugned order of the Tribunal. Those may be answered in favour of the assessee and against the Revenue.

14. *Per contra*, Mr. Sharma, learned standing counsel, Revenue supports the impugned order passed by the Tribunal. He submits that assessee had made improper and unsubstantiated claim of bad debt, thereby reducing the total income and consequential quantum of tax which came to light only during scrutiny assessment and rightly disallowed by the Assessing Officer. Had the case not been selected for scrutiny, such inadmissible claim would have escaped assessment. CIT (A) rightly held that the assessee had wilfully submitted inaccurate particulars

of income which had resulted into concealment, which was affirmed by the Tribunal. Therefore, Assessing Officer was justified in imposing the penalty which has been confirmed by both the lower appellate authorities by applying the correct principles. In such circumstances, learned standing counsel submits that there is no merit in the appeal, which should accordingly be dismissed.

15. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record including the judgments cited at the Bar.

16. Since imposition of penalty is under Section 271(1)(c) of the Act, the same may be adverted to at the outset. As per this provision, if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under the Act is satisfied that any person had concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income.

17. The two key expressions in Section 271(1)(c) of the Act are “concealment of particulars of his income” and “furnishing inaccurate particulars of such income”. These two expressions comprise of the two limbs for imposition of penalty under Section 271(1)(c) of the Act. Gujarat High Court in the case of *Manu Engineering Vs. CIT*, **122 ITR 306** and Delhi High Court in *Virgo Marketing P. Ltd. Vs. CIT*, **171 Taxmann 156** held that levy of penalty has to be clear as to the limb for which penalty is levied. If the Assessing Officer proposes to invoke the first limb, then the notice has to be appropriately marked. Similarly, if the Assessing Officer wants to invoke the second limb then the notice has also to

be appropriately marked. If there is no striking off of the inapplicable portion in the notice which is in printed format, it would lead to an inference as to non-application of mind. In such a case, penalty would not be sustainable.

18. Supreme Court in *Ashok Pai Vs. CIT*, **292 ITR 11** observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act carry different connotations.

19. Having discussed the above, let us address the submissions advanced by learned counsel for the parties.

20. In so far the first contention of learned counsel for the appellant is concerned i.e., raising a question of law for the first time before the High Court though not raised before the lower authorities, our attention is drawn to a decision of the Supreme Court in **Jhabua Power Limited** (*supra*) relied upon by learned counsel for the appellant. In that case two questions were raised by the Revenue for the first time before the Supreme Court. The two questions related to bar of limitation for imposing penalty under Section 275(1) of the Act. Supreme Court took the view that the two questions were required to be answered first by the Tribunal. Accordingly, Supreme Court set aside the orders passed by the High Court and the Tribunal and remanded the matter back to the Tribunal to decide the two questions in accordance with law.

20.1. In **Ashish Estates & Properties (P) Ltd.** (*supra*), this Court was confronted with the question as to whether Tribunal was justified in not giving any reasons and in not deciding the issue relating to disallowance under Section 14A of the Act *qua* strategic investments made in the firms and companies for executing various projects. However, this Court noticed that the issue of strategic investments was not urged by the assessee before the Tribunal more particularly that disallowance under Section 14A of the Act could not be in excess of the total

exempt income. This Court referred to a series of decisions of the Supreme Court as well as of this Court wherein it has been held that a question not raised before the Tribunal and consequently not decided by the Tribunal would not be a question arising out of the order of the Tribunal. An appeal under Section 260-A of the Act can only be in respect of issues which were raised before the Tribunal. Reference was made to the decisions in *CIT Vs. Tata Chemicals (P) Ltd.*, **256 ITR 395** and in *CIT Vs. Smt. Lata Shantilal Shah*, **323 ITR 297** where the Court had taken the view that a question of law not raised before the Tribunal would not be allowed to be urged before the High Court in an appeal under Section 260-A of the Act. After going through the entire spectrum of case laws on this point, this Court ultimately observed that notwithstanding the view taken in **Tata Chemicals (P) Ltd.** (*supra*) and **Smt. Lata Shantilal Shah** (*supra*), it would not preclude the High Court from entertaining an appeal on issue of jurisdiction even if the same was not raised before the Tribunal. However, in that case, the proposed question was found to be neither one of jurisdiction nor raising any substantial issue.

20.2. Therefore, from the above it can be culled out that if an issue is not urged before the Tribunal, the same cannot be raised before the High Court in an appeal under Section 260-A of the Act. However, in **Jhabua Power Limited** (*supra*), Supreme Court had remanded the questions raised before it for the first time back to the Tribunal for deciding the questions in accordance with law. Again, in **Ashish Estates & Properties (P) Ltd.** (*supra*), this Court has taken the view that an appeal under Section 260-A of the Act can be entertained by the High Court on the issue of jurisdiction even if the same was not raised before the Tribunal.

21. Let us now advert to the fourth question i.e. Question number D framed / proposed by the appellant. Through this question, appellant is contending that the Tribunal ought to have held that the order of penalty passed under Section 271(1) (c) of the Act was bad in law in view of the fact that at the time of initiation of penalty proceedings as well as at the time of imposition of penalty, Assessing

Officer was not clear as to which limb of Section 271 (1)(c) of the Act was attracted. At the time of hearing, learned counsel for the appellant had argued that in the show-cause notice the inapplicable portion was not struck off; thus it was not indicated in the notice whether the penalty was sought to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income, which has vitiated the impugned order of penalty. However, she fairly submits that this point was not urged before the lower authorities including the Tribunal. We have already noted and analyzed the two limbs of Section 271(1)(c) of the Act and also the fact that the two limbs i.e. concealment of particulars of income and furnishing inaccurate particulars of income carry different connotations. We have also noticed that the Assessing Officer must indicate in the notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in the printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non-application of mind, thus vitiating imposition of penalty.

21.1. Therefore, the question relating to non-striking off of the inapplicable portion in the show-cause notice which is in printed format, thereby not indicating therein as under which limb of Section 271(1)(c) of the Act penalty was proposed to be imposed i.e. whether for concealing the particulars of income or for furnishing inaccurate particulars of such income would go to the root of the *lis*. Therefore, it would be a jurisdictional issue. Being a jurisdictional issue, it can be raised before the High Court for the first time and adjudicated upon even if it was not raised before the Tribunal.

21.2. In *CIT Vs. Manjunath Cotton and Ginning Factory*, **359 ITR 565**, Karnataka High Court held that Assessing Officer while issuing notice has to come to the conclusion as to whether it is a case of concealment or furnishing of inaccurate particulars. Levy of penalty has to be clear as to the limb for which it

was levied. The standard proforma without striking off the relevant causes will lead to an inference as to non-application of mind.

21.3. In **SSA's Emerald Meadows** (*supra*), Karnataka High Court was again confronted with a similar question. In that case, Tribunal had allowed the appeal filed by the assessee by holding that the notice issued by the Assessing Officer under Section 274 read with 271(1)(c) of the Act was bad in law as it did not specify under which limb of Section 271(1)(c) of the Act the penalty proceeding was initiated i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. While allowing the appeal, Tribunal had relied upon **Manjunath Cotton & Ginning Factory** (*supra*). In the circumstances, Karnataka High Court dismissed the appeal of the Revenue.

21.4. Revenue preferred Special Leave Petition (SLP) before the Supreme Court against the decision of the Karnataka High Court in **SSA's Emerald Meadows** (*supra*). In **(2016) 242 Taxmann 180**, Supreme Court dismissed the SLP.

21.5. Though the decision of the Karnataka High Court in **SSA's Emerald Meadows** (*supra*) which relied upon **Manjunath Cotton & Ginning Factory** (*supra*) was not interfered with by the Supreme Court by dismissing the SLP, the fact remains that dismissal of SLP would not lead to merger of the High Court's order with the order of the Supreme Court.

21.6. This Court in **Samson Pernchery** (*supra*) was examining the question as to justification of the Tribunal in deleting the penalty levied under Section 271(1)(c) of the Act. In that case, Tribunal had deleted the penalty imposed by the Assessing Officer because initiation of penalty proceedings was for furnishing inaccurate particulars of income whereas the order imposing penalty was for concealment of income. Further Tribunal noted that the notice issued under Section 274 of the Act was in a standard proforma without having struck out irrelevant clauses therein.

Revenue contended that there was no difference between furnishing of inaccurate particulars of income and concealment of income. This contention of the Revenue was rejected by this Court in view of the Supreme Court decision in **Ashok Pai** (*supra*). Referring to the decision of the Karnataka High Court in **Manjunath Cotton & Ginning Factory** (*supra*), this Court held that satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned in Section 271(1)(c) of the Act for initiation of penalty proceedings will not warrant penalty being imposed for the other breach. This is because the assessee would respond only to the ground on which the notice was issued. In other words, penalty cannot be imposed on a ground of which assessee had no notice. It was further observed by this Court that nothing could be shown which would warrant taking a view different from the view taken by the Karnataka High Court in **Manjunath Cotton & Ginning Factory** (*supra*).

21.7. In **Goa Coastal Resorts & Recreation Pvt. Ltd.** (*supra*) both the lower appellate authorities had categorically held that there was no record of satisfaction of the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. In such circumstances, this Court held that the two lower appellate authorities had correctly ordered dropping of penalty proceedings against the assessee. It was in that context that this Court noted that in the notice issued in printed format the inapplicable portion was not struck off. Therefore in that case, this Court found that in addition to the notice being defective, there was no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

21.8. Similar is the view taken in **New Era Sova Mine** (*supra*) as well as in **Shri Hafeez S. Contractor** (*supra*).

22. Coming to the facts of the present case, we have already noticed that in the assessment order dated 28.02.2006, Assessing Officer had ordered that since the

assessee had furnished inaccurate particulars of income, penalty proceedings under Section 271(1)(c) were also initiated separately. Therefore, it was apparent that penalty proceedings were initiated for furnishing inaccurate particulars of income.

23. The statutory show-cause notice under Section 274 read with Section 271 of the Act proposing to impose penalty was issued on the same day when the assessment order was passed i.e., on 28.02.2006. The said notice was in printed form. Though at the bottom of the notice it was mentioned 'delete inappropriate words and paragraphs', unfortunately, the Assessing Officer omitted to strike off the inapplicable portion in the notice i.e., whether the penalty was sought to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of such income. Such omission certainly reflects a mechanical approach and non-application of mind on the part of the Assessing Officer.

24. However, the moot question is whether the assessee had notice as to why penalty was sought to be imposed on it?

25. This brings us to the basic question as to what is a notice or what do we mean by notice. Concise Oxford English Dictionary, Indian Edition, explains notice to mean the fact of observing or paying attention to something; advanced notification or warning; a displayed sheet or placard giving news or information. It means to become aware of. In other words, to put someone on notice would mean warn someone of something about or likely to occur. Black's Law Dictionary, Eighth Edition, defines the expression 'notice' to mean having actual knowledge of a fact; has received information about it; has reason to know it; knows about the related fact. In *CST Vs. Subhash & Company*, (2003) 3 SCC 454, Supreme Court deliberated upon the concept of notice and observed that the term 'notice' has originated from the Latin word "notifia" which means "being known" or "a knowing". Thereafter, Supreme Court referred to the definition of the word 'notice'

in various general and judicial dictionaries. Without adverting to the large number of definitions, suffice it to say notice would mean information, warning or announcement of something impending; notice in its legal sense may be defined as information concerning a fact communicated to a party by an authorized person or actually derived by him from a proper source; the term “notice” in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief as well as direct information of that fact.

26. Reverting back to the facts of the present case, if the assessment order and the show cause notice, both issued on the same date i.e., on 28.02.2006, are read in conjunction, a view can reasonably be taken that notwithstanding the defective notice, assessee was fully aware of the reason as to why the Assessing Officer sought to impose penalty. It was quite clear that for breach of the second limb of Section 271 (1)(c) of the Act i.e., for furnishing inaccurate particulars of income that the penalty proceedings were initiated. The purpose of a notice is to make the noticee aware of the ground(s) of notice. In the present case, it would be too technical and pedantic to take the view that because in the printed notice the inapplicable portion was not struck off, the order of penalty should be set aside even though in the assessment order it was clearly mentioned that penalty proceedings under Section 271(1)(c) of the Act had been initiated separately for furnishing inaccurate particulars of income. Therefore, this contention urged by the appellant / assessee does not appeal to us and on this ground we are not inclined to interfere with the imposition of penalty.

27. Having held so, let us now examine whether in the return of income the assessee had furnished inaccurate particulars of income. As already discussed above, for imposition of penalty under Section 271(1)(c) of the Act, either concealment of particulars of income or furnishing inaccurate particulars of such income are the *sine qua non*. In the instant case, as we have seen, penalty proceedings under Section 271(1)(c) of the Act were initiated on the ground that

assessee had furnished inaccurate particulars of income.

28. In the assessment proceeding, assessee filed its return of income on 28.11.2003 declaring total loss at Rs.4,66,68,740.00. Assessee disclosed that it had debited Rs.62,47,460.00 under the head 'selling and distribution expenses' and claimed it as bad debt in the books of account. As per the explanation given by the assessee it was exporting fabrics through M/s. JCT Ltd., a recognized export house for which assessee had an ongoing account with M/s. JCT Ltd. M/s. JCT Ltd. raised quality claims from time to time and was pressing the assessee for settlement. As the assessee was in need of funds, it could not settle the claims. It was only during the assessment year under consideration that assessee had the requisite funds and paid to M/s. JCT Ltd. Rs.62,47,460.00 as full and final settlement, confirmation of which from M/s. JCT Ltd. was submitted. Assessee clarified during the assessment proceedings that the said amount which was written off was actually not bad debt but in the nature of rebate and discounts given to M/s. JCT Ltd. on account of quality claims made by it from time to time. This explanation of the assessee was not accepted by the Assessing Officer by holding that subsequent payment made to M/s. JCT Ltd. would not be covered by Section 36(1)(vii) of the Act since the amount claimed as bad debt was actually not a debt. Thereafter Assessing Officer examined as to whether such payment would be covered under Section 37(1) of the Act as per which an expenditure would be allowable as a deduction if it pertains to that particular year and incurred wholly and exclusively for the purpose of business. Assessing Officer held that the assessee's claim was not admissible even under Section 37(1) of the Act as the circumstances indicated that the payments were not made wholly and exclusively for business purpose. While disallowing the claim of the assessee, Assessing Officer took the view that since the assessee had furnished inaccurate particulars of income, penalty proceedings under Section 271(1)(c) of the Act was also initiated separately.

29. We have already noticed that in the statutory show cause notice, Assessing Officer did not indicate as to whether penalty was sought to be imposed for concealment of income or for furnishing inaccurate particulars of income though in the assessment order it was mentioned that penalty proceedings were initiated for furnishing inaccurate particulars of income.

30. Be that as it may, in the order of penalty, Assessing Officer held that assessee had concealed its income as well as furnished inaccurate particulars of income.

31. Concealment of particulars of income was not the charge against the appellant, the charge being furnishing inaccurate particulars of income. As discussed above, it is trite that penalty cannot be imposed for alleged breach of one limb of Section 271(1)(c) of the Act while penalty proceedings were initiated for breach of the other limb of Section 271(1)(c). This has certainly vitiated the order of penalty. In appeal, CIT (A) took a curious view that submission of inaccurate particulars of income resulted into concealment, thus upholding the order of penalty. This obfuscated view of the CIT (A) was affirmed by the Tribunal.

32. On the ground that while the charge against the assessee was of furnishing inaccurate particulars of income whereas the penalty was imposed additionally for concealment of income, the order of penalty as upheld by the lower appellate authorities could be justifiably interfered with, still we would like to examine whether there was furnishing of inaccurate particulars of income by the assessee in the first place because that was the core charge against the assessee.

33. In **Reliance Petroproducts Pvt. Ltd.** (*supra*), Supreme Court examined meaning of the words 'particulars' and 'inaccurate'. As per Law Lexicon, the word 'particulars' means 'detail or details; the details of a claim or the separate items of

an account'. Therefore, it was held that the word 'particulars' used in Section 271(1)(c) of the Act would embrace the meaning of the details of the claim made. Referring to Webster's Dictionary where the word 'inaccurate' has been defined as 'not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statment, copy or transcript', Supreme Court held that the two words i.e., 'inaccurate' and 'particulars' read in conjunction must mean that the details supplied in the return are not accurate, not exact or correct, not according to truth or erroneous. It was held that mere making of a claim which is not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding the income of the assessee. Therefore, such claim made in the return cannot amount to furnishing inaccurate partiulars of income. Elaborating further, Supreme Court held that if such stand of the Revenue was accepted then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c) of the Act which is clearly not the intendment of the Legislature.

34. This decision was followed by this Court in *CIT Vs. M/s. Mansukh Dyeing & Printing Mills*, **Income Tax Appeal No.1133 of 2008**, decided on **24.06.2013**. In *CIT Vs. DCM Ltd.*, **359 ITR 101**, Delhi High Court applied the said decision of the Supreme Court and further observed that law does not debar an assessee from making a claim which he believes is plausible and when he knows that it is going to be examined by the Assessing Officer. In such a case a liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law. Threat of penalty cannot become a gag and / or haunt an assessee for making a claim which may be erroneous or wrong. Again, in *CIT Vs. Shahabad Co-operative Sugar Mills Ltd.*, **322 ITR 73**, Punjab & Haryana High Court held that making of wrong claim is not at par with concealment or giving of inaccurate information which may call for levy of penalty under Section 271(1)(c) of the Act.

35. Reverting back to the present case it is quite evident that assessee had declared the full facts; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated under Section 271(1)(c) of the Act.

36. Thus, on a careful examination of the entire matter, while we answer question number D against the appellant / assessee, question numbers A, B and C are answered in favour of the appellant / assessee. Therefore, on an overall consideration, the appeal would stand allowed and the order of penalty as affirmed by the two lower appellate authorities would consequently stand interfered with.

37. Accordingly, the appeal is allowed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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