

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

ITA No.1568/Bang/2019
(Assessment year : 2015-16)

M/s Frontier Business Systems Pvt.Ltd.,
No.3, Wood Street, Ashok Nagar,
Bangalore-560 013
PAN No.AAACF2942H

Appellant

Vs

The Income Tax Officer,
Ward-7(2)(1),
Bangalore

Respondent

Assessee by : None
Revenue by : Smt. R.Premi,JCIT

Date of Hearing : 10-06-2020
Date of Pronouncement : -06-2020

ORDER

PER B.R.BASKARAN, AM:

The assessee has filed this appeal challenging the order dated 30-04-2019 passed by Id.CIT(A)-3, Bangalore confirming the penalty of Rs.2.00 lakhs levied by the AO u/s 271(1)(c) of the IT Act, 1961.

2. None appeared on behalf of the assessee, even though the case was adjourned on the last occasion at the request of the assessee. Hence, we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard the ld. DR and perused the record. The assessee is engaged in the business of trading and undertaking IT infrastructure related items and also provide services. The assessment in the hands of the assessee was completed u/s 143(3) of the IT Act, 1961 by making the following additions

<i>Sl.No</i>	<i>Particulars</i>	<i>Amount</i>
1	<i>CSR expenses disallowed</i>	<i>1,38,000/-</i>
2	<i>U/s 40(a)(i) tax not deducted on purchase of software</i>	<i>1,71,980/-</i>
3	<i>U/s 40(a)(iii) as tax not deducted on payment of salary to a non-resident</i>	<i>2,90,140/-</i>

The AO levied penalty of Rs.2.00 lakhs on the above said disallowances u/s 271(1)(c) of the Act, holding that the assessee has furnished “inaccurate particulars of income”. The ld. CIT(A) has also confirmed the same and hence, the assessee has filed this appeal before us.

4. We shall first take up the issue of penalty levied on the disallowances made by the AO u/s 40(a)(i) and 40(a)(iii) of the IT Act, 1961. There is no dispute with regard to the fact that the disallowances made u/s 40(a)(i) and 40(a)(iii) are statutory disallowances which are required to be made for non-deduction of tax at source as per the provisions of the Income tax Act. It is not the case of the revenue that the expenses, which were disallowed due to statutory provisions, were either bogus or non-genuine, i.e., but for the statutory provisions, the said expenses are allowable under the Act. It is also a fact that the assessee has disclosed the details relating to the relevant expenses. Hence, the question of furnishing of inaccurate particulars of income with regard to these disallowances does not arise, as per the decision rendered by Hon’ble Supreme Court in the case of Reliance Petro Products Ltd. 322 ITR 158, in which it was held that mere making of a claim which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars of income.

5. In the instant case, assessee has claimed expenditure which is otherwise allowable, but for the statutory provisions of sec.40(a)(i) &(iii) of the IT Act, 1961. Hence, such statutory disallowance will not fall under the category of furnishing of inaccurate particulars of income and therefore, penalty levied u/s 271(1)(c) of the IT Act is not sustainable on such kind of disallowances. We notice that the Mumbai Bench of the Tribunal has also considered an identical issue in the case of *Tanushree Basu Vs ACIT (ITA No.2922/Mum/2012) dated 25-05-2013* and it was decided in favour of the assessee as under:-

“6. We have considered submissions of Id representatives of parties and perused orders of authorities below. It is a fact that assessee has claimed expenses aggregating to Rs.16,17,766/- and same were disallowed by the AO while completing the assessment under section 143(3) of the Act on the ground that assessee failed to deduct TDS. We observe that the genuineness of the claim of the assessee has not been disputed by the department. Therefore, it cannot be said that assessee has claimed expenses which are false or not genuine. Assessee has furnished all the relevant facts concerning the claim made by it in the return filed. AO has levied penalty in respect of said amount merely because said claim of the assessee was disallowed u/s.40(a)(ia) of the Act as assessee failed to deduct TDS thereon. The Apex Court in the case of [Reliance Petroproducts Ltd \(supra\)](#) has held that a mere making of the claim which is not sustainable in the law, by itself will not amount to furnishing inaccurate particulars of income. In the present case, admittedly, assessee made a claim but the same was rejected and disallowed not for the reason that the claim was not genuine or was fabricated but in view of provisions of law that

assessee did not deduct TDS thereon. We are of the considered that view that the ratio of judgment of Hon'ble Apex Court in the case of [Reliance Petroproducts Ltd \(supra\)](#) squarely applies to the facts of the case before us and, therefore, levy of penalty is not justified. We also observe that similar issue has also been considered by ITAT Ahmedabad in the case of Mazda Ltd (supra), wherein, levy of penalty u/s.271(1)(c) of the Act was cancelled which was levied on account of dis allowance of claim for deduction of royalty and technical know how as per section 40(a)(ia) of the Act., as the assessee failed to deduct TDS on above payments. The ratio of the said case also applies squarely to the case before us.

7. In view of above, we hold that levy of penalty, in the facts and circumstances of the case, is not in accordance with law and same is deleted by allowing ground of appeal taken by assessee.”

Accordingly, we hold penalty levied u/s 271(1)(c) of the Act is not leviable on the disallowances made u/s 40(a)(i) and 40(a)(iii) of the IT Act, 1961.

6. The next disallowance, on which penalty was levied, is disallowance of CSR expenses amounting to Rs.1,38,000/-. During the course of assessment proceedings the AO noticed that the assessee has incurred CSR expenses and the same was not disallowed by the assessee, as per requirement of Explanation-2 to sec.37 of the Act. Accordingly, he disallowed the same and also levied a penalty u/s 271(1)(c) of the Act rejecting the contention of the assessee and the said disallowance was not voluntarily due to oversight. The Id. CIT(A) also confirmed the penalty levied on the said disallowance.

7. We notice that the assessee has disclosed the CSR expenses in his return of income and has submitted before the AO that the disallowance was not made voluntarily as per requirement of sec.37 of the IT Act, by oversight. Hence, it is a case of inadvertent omission by the assessee. It is not the case that the assessee has disclosed the impugned expenses as some other allowable expense and the AO has found the same to be CSR expenditure. Hence the explanation of the assessee appears to be a bonafide one. The Hon'ble Supreme Court in the case of *Price Water House Cooper (P) Ltd Vs CIT (2012) 25 Taxmann.com 400* has held that penalty is not leviable on a bonafide and inadvertent error committed by the assessee. Accordingly, we are of the view that the Id.CITA) was not justified in confirming the penalty levied on this disallowance also.

8. In view of the foregoing discussion, we are of the view that the impugned penalty levied u/s 271(1)(c) of the Act is liable to be cancelled. Accordingly, we set aside the order passed by the Id. CIT(A) and direct the AO to delete the penalty levied u/s 271(1) (c) of the Act for the year under consideration.

9. In the result, the appeal filed by the assessee is allowed.

Order Pronounced on

(N.V.VASUDEVAN)
VICE PRESIDENT

Plac: Bangalore

Dated :

*am

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

(B.R.BASKARAN)
ACCOUNTANT MEMBER

By order
Asst. Registrar