

आयकर अपील अा अधकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1568/AHD/2018

अाधरण वष/Asstt. Year: 2012-2013

Arrow Digital Pvt. Ltd., 1005-06, 10 th Floor, Aditya Complex, C.G. Road, Ahmedabad-38006. PAN: AAECA2215J	Vs.	D.C.I.T, Cirle-1(1)(1) Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri Deelip Kumar, Sr.D.R

सुनवाई का तारख/Date of Hearing : 10/02/2020

घोषणा का तारख /Date of Pronouncement: 05/03/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-1, Ahmedabad, dated 18/05/2018 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.29/12/2014 relevant to the Assessment Year 2012-2013.

The assessee has raised the following grounds of appeal.

1.1 The order passed u/s.250 on 18.05.2018 for A.Y.2012-13 by CIT(A)-1, Abad upholding the penalty imposed u/s.271(1)(c) of Rs.1,49,068/- in respect of disallowance of expenses is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant.

2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the penalty imposed u/s.271(1)(c) of Rs.1,49,068/-by AO.

2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the penalty imposed u/s.271(1)(c) of Rs. 1,49,068/-by AO.

3.1 The Ld.CIT(A) has grievously erred in law and on facts in not appreciating that in absence of any clear finding as to the nature of default u/s.271(1)(c) made out by AO, the penalty proceedings as well as penalty imposed both were illegal and unlawful.

It is, therefore, prayed that penalty imposed u/s.271(1)(c) of rs.1,49,068/- upheld by the CIT(A) may kindly be deleted.

2. The effective issue raised by the assessee is that the learned CIT (A) erred in confirming the penalty levied under section 271(1)(c) of the Act, on account of furnishing inaccurate particulars of income.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading of printing machine. The assessment was framed under section 143(3) of the Act after making the disallowance/addition on account of gratuity expenses and exhibition expenses for Rs. 1,33,781/- and Rs. 3,48,640/- respectively vide order dated 29th Dec, 2014. The AO accordingly in the assessment order initiated the penalty proceedings on account of furnishing inaccurate particulars of income.

3.1 However, the assessee during the penalty proceedings claimed that the expenses claimed by it are genuine but the same has been disallowed on account of difference in the view for allowing such claim. As such, the expenses claimed by the assessee were treated as income under the deeming provisions. Therefore, there cannot be any penalty on the disallowance of the claim made by the assessee.

However, the AO was of the view that the expenses claimed by the assessee are not allowable by the operations of the provisions of the Act. Had there not been any scrutiny assessment, the assessee would have been allowed the expenses as discussed above which would have resulted the under assessment of income. Accordingly, the AO levied the penalty for Rs. 1,49,068/- being 100% of the amount of tax sought to be evaded.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

*2.4. On careful consideration of entire facts, it is seen that during the course of assessment proceedings, the contention of the appellant cannot be accepted by the Assessing officer that claim of the expenses in the profit and loss account was right. However, Appellant has not submitted any bona fide explanation regarding why he has not deducted TDS on the payment of Exhibition expenses. Hence, cannot be allowed as revenue expenditure. The contention of the appellant that it had claimed deduction on account of Maersk India Pvt Ltd. after making due payments. The Maersk India Pvt Ltd. is an Indian Company and any payment made to this company, the TDS requires to be deducted. The case cited by the appellant of Hon'ble ITAT, Delhi in the case of Syndicate Labtes v/s CIT Delhi Tribunal, is on different footing and related to the freight expenses paid. Here, the question is of the expenditure made on Exhibition expenses. The contention of the appellant is not acceptable as he has not deducted TDS on above payment. The appellant has unnecessarily tried to bring the issue as disputed and claimed that no penalty is livable. All the case laws cited by the appellant in regard and their ratios are not applicable to this case. It is pertinent to note that **Hon'ble Delhi High Court** in the case of CIT v/s **Zoom Communications Limited** 327 **ITR 510** has held as under:*

*"Section 271(1)(c) of the 'income-tax Act, 1961 - Penalty - For concealment of income- Whether so long as assesses has not concealed any material fact or any factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty under section 271(1)(c), even if claim made by him is unsustainable in law, provided that he either substantiates explanation offered by him or explanation, even if not substantiated, is found to be bona fide- Held, yes - **Whether if assesses makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona fide, Explanation 1 to section 271(1)(c) would come into play and assessee will be .liable to penalty- Held, yes"***

*The Hon'ble Delhi Court in above case has also considered the decision of Hon'ble Supreme Court in the case of Reliance **Petro products (P) Limited** and held as under:*

""18. In the case of Reliance Petro products (P.) Ltd. (supra), the addition made by the Assessing Officer in respect of the interest claimed as a deduction under section 36(1)(iii) of the Act was deleted by the Commissioner of Income-tax (Appeals) though it was later

restored, by the Tribunal, to the Assessing Officer. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court, it was, in these circumstances, that the Tribunal came to the conclusion that the assessee had neither concealed the Income nor filed inaccurate particulars thereof. In recording this finding, the Tribunal felt that if two views of the claim of the assessee were possible, the explanation offered by it could not be said to be false. This, however, is not the factual position in the case before us. The facts of the present case thus are clearly distinguishable.

19. *It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect in law is mala fide, Explanation 1 to section 271(1) would come into play and **work to the disadvantage of the assessee.**"*

*The facts of the appellant case are similar as have been discussed in the case of the CIT Vs. Zoom Communication (P) Ltd. 40 DTR (Dei) 249. Considering the facts discussed' herein above, it is held that the claim made-by the assessee **is** not bona fide. The claim besides being incorrect in law is mala fide, and Explanation 1 to section 271(1)(o) would come into play and work to the disadvantage of the assessee. Even in the present case Appellant has failed to establish its claim of Rs.4,82,421/- which was not added back to the total income. In view of the above discussion and judicial ratios (supra). Assessing Officer was justified in levying penalty of Rs.1,49,068/- u/s.271(1)(c) of the Act for concealment and furnishing inaccurate particulars. Hence, the penalty levied of Rs.1,49,068/- for the default is confirmed. The ground of appeal with sub grounds is dismissed.*

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 68 and claimed that it has not furnished any inaccurate particular of income. Therefore the assessee cannot be subject to the penalty under section 271(1)(c) of the Act.

6. On the other hand, the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case the penalty has been levied on two counts. Firstly, on the claim of the assessee representing the provision for gratuity amounting to Rs. 1,33,781/- and secondly the assessee failed to deduct the TDS on the exhibition expenses of Rs. 3,48,640/- under the provisions of section 195 of the Act.

7.1 Regarding the claim of the assessee for the gratuity expenses, we note that the auditor in his tax auditor report has clearly mentioned that the impugned expenses are not allowable under the Act. But despite that the assessee did not make any disallowance in the computation of income and also contested for the deduction of the same till the learned CIT-A. However, it is transpired that there was the disclosure made by the tax auditor in the tax audit report furnished in form 3 CD. Thus it cannot be that the assessee deliberately furnished inaccurate particulars of income. Similarly, the AO got information about the disallowance of the provision for gratuity from the tax audit report only. The AO has not carried out any investigation for detecting the claim of the assessee towards the provision for gratuity which was not allowable as deduction. In holding so, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of **Price Waterhouse Coopers Pvt. Ltd. vs CIT reported in 25 taxmann.com 400** wherein, it was held as under:

"The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

Given the peculiar facts of this case, the imposition of penalty on the assessee is not justified. The assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars"

In view of the above, we hold that the assessee has not furnished any inaccurate particular of income deliberately. Accordingly he cannot be visited with the penalty under section 271(1)(c) of the Act, in the given facts and circumstances.

7.2 Regarding the disallowance of the exhibition expenses under the provisions of section 40(a)(i) r.w.s. 195 of the Act, we note that claim of the assessee was not doubted by the authorities below. As such, the assessee has incurred expenses for the purpose of the business but the same was disallowed by virtue of the provisions of section 40(a)(i) r.w.s. 195 of the Act. Accordingly the same was deemed as income of the assessee by the operation of law. But the controversy arises whether the assessee has furnished inaccurate particular of income by claiming the deduction on account of exhibition expenses which was disallowed on account of non-deduction of TDS under section 195 of the Act. In this connection, we note that the term inaccurate particular has not been defined under the Act. However various court including the Hon'ble Apex court defined the term as the details of claim made are not accurate, not according to the truth, not exact or erroneous. In this regard we find support and guidance from the order of the Hon'ble Apex court in the case of Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158. The relevant extract of the order is reproduced as under:

"it must be shown that the conditions under section 271(1)(c) exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed, because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. [Para 8]

The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]"

7.3 However in the present case the genuineness of expenses claimed was not found as incorrect by the authority. Therefore in the present facts and circumstances the assessee should not be visited with penalty merely on the basis of claim made by the assessee is not maintainable in the view of Revenue unless and until the genuineness of expenses claimed found to be incorrect or erroneous. Moreover, it is not like this that the assessee shall never be allowed deduction for the exhibition expenses. As such the provisions of law permits to claim the deduction in the year in which the assessee deduct the TDS and deposits the same to the income tax

Department. In view of the above, we hold that the assessee has not furnished any inaccurate particular of income deliberately. Accordingly he cannot be visited with the penalty under section 271(1)(c) of the Act in the given facts and circumstances.

8. In the result the appeal filed by the assessee is **allowed**.

Order pronounced in the Court on 05/03/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
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