

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:2509/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2014-15

**M/s. Shree Krishna Plastic
Process Pvt. Ltd.,**
No.F9, 11th Street, 2nd Floor,
Ambattur Industrial Estate,
Ambattur, Chennai – 600 058.

The DCIT,
v. Corporate Circle – 6(1),
Chennai.

PAN: AAPCS6145N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri C.Ramesh & Co, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 17.08.2021
घोषणा की तारीख/Date of Pronouncement : 03.09.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-15, Chennai, dated 27.02.2019 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

“1. As per sec 273(1)(c)(iii) penalty can be levied only when there is tax liability. But in the case of assessee there was no tax liability as the assessee has returned Loss.

1.1. We are reproducing the Provisions of section 271(1)(c) which provides for imposition of penalty for concealment of income i.e. such a penalty can be imposed only when the assessee has:

- a. Concealed the particulars of his income; or*
- b. Furnished inaccurate particulars of income.*

1.2 Further 271 (1)(c)(iii) provides, in the cases referred to in clause (c) (in addition to tax if any 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 the reason of the concealment of particulars of his income (or fringe benefits) or the furnishing of inaccurate particulars of such income.

1.3 Hence for Imposing penalty u/s 271 (1) (c) (iii) there must be a positive income resulting in tax. The Penalty Imposed was in addition to any tax payable. If there was no tax, no penalty could be levied.

1.4 The appellant filed return declaring loss of Rs.1,86,62,094/- and after assessment by the A.O the loss was reduced to Rs. 2,08,899/-. Even after assessment the appellant was not liable to pay any tax and therefore penalty could not be imposed as neither there were no positive income income nor the appellant was liable to pay any taxes.

1.5 The same was held by the Madras High Court in the case of The Commissioner of Income Tax vs. M/s.Kamy Software Solutions(P) stating that there must be a positive income resulting in tax before any penalty could be levied continued to exist. The penalty imposed was in 'addition to any tax'. If there was no tax, no penalty could be levied. The return filed declaring loss and assessment made at a reduced loss did not warrant any levy of penalty within the meaning of section 271(1)(c)(iii) .

2. Section 68 on Book Adjustment :

2.1 The Assessing Officer made an addition of Rs.1,84,54,195/- as unexplained credit under Section 68 of the Income Tax Act, 1961. If there is no cash involved and it is a case of book adjustment, provisions of Sec 68 treating it as unexplained cash credit cannot be attracted

2.2 The same was held in the case of V. R. Global Energy Pvt. Ltd vs. ITO (Madras High Court) stating that if no cash is involved in the transaction of allotment of shares and it is a case of book adjustment, provisions of s. 68 treating it as unexplained cash credit are not attracted.

3. Balance Sheet Presentation :

3.1. The appellant increased the trade payables on opening balance sheet as on 01/04/2013 by Rs.1,23,65,200 by giving credit to TRS Polymers & Distributors, Subramaniam Plastics, R.S. Plastics & Polymers and TS Plastics & Polymers on the liabilities side of the balance sheet. Subsequently the appellant increased Stock by Rs.1,92,13,874 and reduced trade receivables to an extent of Rs.68,48,674.

3.2. The appellant rectified this mistake in the year 2016 financials.

Hence the appellant prays to allow the appeal in view of the above ground”

3. At the outset, the Id.AR for the assessee submitted that there is a delay of 109 days in filing appeal before the Tribunal for which necessary petition for condonation of delay along with affidavit has been filed explaining reasons for not filing the appeal within time allowed under the Income Tax Act, 1961 (hereinafter the 'Act'). The Id.AR for the assessee referring to the condonation petition, submitted that the assessee could not file the appeal in

time due to ill-health of Shri A.Ramesh, Managing Director during the relevant period because he was suffering from cardiac pain, nerves weakness, hyper tension and has to undergo surgery. As per the directions of Doctors, he could not undertake any official work including filing of appeal against the order of the CIT(A). Therefore, he submitted that delay in filing appeal before Tribunal is neither intentional nor to derive any undue benefit. Therefore, appeal filed by the assessee may be admitted to decide the issues on merits.

3.1 The Id.DR on the other hand opposing petition filed by the assessee for condonation of delay in filing appeal, submitted that the reasons given by the assessee that its Managing Director's ill health is not supported by necessary medical records, certificate issued by doctor. Therefore, on the basis of affidavit being a self-serving document, huge delay in filing appeal cannot be condoned. Hence, requested to dismiss the appeal filed by the assessee for not filing appeal in time.

3.2 We have heard both the parties and considered petition filed by the assessee for condonation of delay of 109 days in filing appeal

before the Tribunal and we find that reasons given by the assessee of ill health of Managing Director of the company appears to be reasonable and bonafide and further, comes under reasonable cause as provided under the Act for condonation of delay in filing the appeal. Therefore, we condone the delay in filing appeal and admit the appeal filed by the assessee to decide the issue on merits.

4. The brief facts of the case are that the assessment for the impugned assessment year was completed u/s.143(3) of the Act on 29.11.2016 and determined total loss of Rs.2,08,899/- as against returned loss of Rs.1,86,63,094/- by making addition towards unexplained cash credit of Rs.1,84,54,195/-. The assessee has accepted assessment and not challenged the assessment order before appellate authorities. Thereafter, the AO has initiated penalty proceedings u/s.271(1)(c) of the Act, for furnishing inaccurate particulars of income and hence, show-cause notice u/s.274 r.w.s. 271(1)(c) of the Act was issued and called upon the assessee to explain as to why penalty should not be levied for furnishing inaccurate particulars of income. In response, the assessee submitted that it has neither concealed particulars of income nor

furnished inaccurate particulars of income in respect of addition made by the AO towards unexplained cash credit being sundry creditor in the name of M/s.Shree Krishna Polystrap Pvt. Ltd., of Rs.1,84,54,195/-, because the assessee has shown purchases of stock-in-trade from the sister concern and passed necessary journal entries by debiting purchases into opening stock and crediting to party account under the head 'sundry creditors'. Further, the opening stock was carried forward and shown under the head 'closing stock'. Thus, there is no effect in the profit or loss for the impugned assessment year. Therefore, it cannot be said that the assessee has furnished inaccurate particulars of income, which attracts penalty u/s.271(1)(c) of the Act. The AO, however was not convinced with the explanation furnished by the assessee and according to him, the assessee has furnished inaccurate particulars of income in respect of stock-in-trade and corresponding sundry creditor in the name of M/s. Shree Krishna Polystrap Pvt. Ltd., which is evident from the fact that when the assessee has transferred stock during last year, the contra entry also ought to have been made at the same time. However, stock transfer

was included as part of asset as on 31.03.2013, whereas no such creditor is appearing as liability in its books as on 31.03.2013. Therefore, he opined that it is a clear case of furnishing inaccurate particulars of income, which attracts penalty u/s.271(1)(c) of the Act and thus, levied penalty of Rs.59,87,464/- which is equivalent to 100% tax sought to be evaded.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated its arguments made before the AO and submitted that when the assessee has offered explanation with regard to entries passed in books of accounts regarding purchase of stock-in-trade and corresponding sundry creditor in the name of the party, then it is very clear that the assessee has furnished all particulars of its income necessary for completion of assessment. Therefore, under these circumstances penalty leviable u/s.271(1)(c) of the Act does not attract. The CIT(A) after considering relevant submissions of the assessee and also taken note of various facts brought

out by the AO, opined that the assessee had deliberately furnished inaccurate particulars in respect of purchase of stock-in-trade and sundry creditors, which is evident from the fact that although the assessee claims to have purchased stock in the earlier financial year but, corresponding entries in the books of accounts was not passed. Further, the assessee has no valid explanation even in appeal stage. Therefore, he opined that it is a clear case of furnishing inaccurate particulars of income and hence, affirmed the findings of the AO in levying penalty u/s.271(1)(c) of the Act. Aggrieved by the Id.CIT(A) order, the assessee is in appeal before us.

6. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in confirming penalty levied by the AO u/s.271(1)(c) of the Act, in respect of addition made towards unexplained cash credit u/s.68 of the Act, in respect of sundry creditor shown under the name of M/s. Shree Krishna Polystrap Pvt. Ltd., without appreciating the fact that the assessee has furnished all particulars in respect of purchase of stock-in-trade and thus it is not a case of deliberate furnishing of inaccurate

particulars of income. The Id.AR further submitted that the assessee being a sick company is planning to borrow financial assistance from bank and for this purpose, has increased its stock-in-trade by showing a purchase entry from sister concern. The assessee had increased opening stock as well as closing stock with a corresponding entry to sundry creditors. Thus, from the above, it is very clear that there is no effect into profit / loss for the year and hence, the AO as well as the Id.CIT(A) were incorrect in coming to the conclusion that the assessee has concealed particulars of its income or furnished inaccurate particulars of income.

7. The Id.DR on the other hand, supporting order of the Id.CIT(A) submitted that although the assessee claims to have purchased stock-in-trade from sister concern for the purpose of arranging bank loan, but on perusal of entries passed in books of accounts, it is clear that the assessee claims to have purchased stock-in-trade in the earlier year but no corresponding entries was passed in books of accounts to show the liability against such purchases. From the above, it is very

clear that the assessee has deliberately furnished inaccurate particulars of income, so as to reduce its taxable income and thus, it is a clear case of furnishing inaccurate particulars of income which attracts penalty u/s.271(1)(c) of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee company, a persistent loss making company claims to have purchased stock-in-trade from M/s. Shree Krishna Polystrap Pvt. Ltd., for an amount of Rs.1,84,54,195/-. The assessee has debited purchases to stock-in-trade and credited to parties account under the head 'sundry creditors'. The assessee had also increased corresponding closing stock-in-trade to the extent of purchases made from M/s. Shree Krishna Polystrap Pvt. Ltd., for an amount of Rs.1,84,54,195/-. From the above, what we understood is, the assessee has shown purchases from a group company and the same has been accounted in the books of accounts of the assessee under the head 'purchases' with a corresponding credit in the name of the party under the head

'sundry creditors'. Further, the assessee had also increased closing stock value equivalent to amount of purchase from M/s. Shree Krishna Polystrap Pvt. Ltd. Thus, from the above it is very clear that there is no effect on the profit or loss for the impugned assessment year, because the value of stock-in-trade has been increased in the balance sheet to the extent of Rs.1,84,54,195/- with a corresponding sundry creditor in the name of M/s. Shree Krishna Polystrap Pvt. Ltd., for Rs.1,84,54,195/-. Thus, in our considered view all particulars have been furnished when the AO has called upon to explain the credit in the name of M/s. Shree Krishna Polystrap Pvt. Ltd. The assessee has also explained the reasons for showing purchases from sister concern, as per which the assessee being a sick company is in the process of arranging financial assistance from banks and for this purpose, it needs to show stock-in-trade in the books of accounts of the assessee. Although, the assessee has explained the transactions of purchases, sundry creditors in the name of the party and corresponding closing stock-in-trade, but the AO has disregarded explanation furnished by the assessee and has

made addition towards amount shown under the head 'sundry creditors' as unexplained cash credit u/s.68 of the Act.

9. We have given our thoughtful consideration to the reasons given by the AO to levy penalty u/s.271(1)(c) of the Act and arguments advanced by the Id.AR for the assessee and we do not ourselves subscribe to the reasons given by the AO to levy penalty for the simple reason that mere accepting addition made by the AO without challenging said addition before appellate authorities does not tantamount to furnishing inaccurate particulars of income, more particularly when the assessee had explained the transactions with necessary evidences and further, the explanation of the assessee is bonafide and not found to be false. In this case, on perusal of reasons given by the AO in the assessment order as well as penalty order, what we understood is the AO has completely mis-stated the facts without understanding the principles of accountancy, which is evident from the fact that although the assessee has passed entries for purchase in its books of accounts by debiting to purchase account and crediting to

sundry creditors account, the AO has stated that the assessee has purchased the goods in the earlier financial year and has not recorded the same in the books of accounts of the assessee. We further noted that the AO has reproduced the ledger extract of the sundry creditors as well as stock-in-trade in the books of accounts of the assessee and as per said ledger accounts, the assessee has shown purchases from Shree Krishna Polystrap Pvt. Ltd., with a corresponding sundry creditors in the name of the party and further, increased the value of closing stock equivalent to amount of purchases made from M/s. Shree Krishna Polystrap Pvt. Ltd. Therefore, from the above it is very clear that the assessee has explained the transactions with necessary evidences and has also furnished necessary details before the AO to determine its taxable income. Further, from the above it is very clear that there is no effect on the profit / loss or taxable income for the impugned assessment year. Therefore, we are of the considered view that when the assessee has explained the entries with necessary evidences and said explanation is not found to be false, then merely for the reason that assessee had

accepted addition made towards particular income is not a ground to hold that the assessee has furnished inaccurate particulars of income, which warrants levy of penalty u/s.271(1)(c) of the Act. The Id.CIT(A) without appreciating facts, has simply confirmed penalty levied by the AO. Hence, we set aside the order of the Id.CIT(A) and direct the AO to delete penalty levied u/s.271(1)(c) of the Act.

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

Order pronounced in the court on 3rd September, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd September, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |