

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 934/Bang/2017</b>
<b>Assessment Year : 2011-12</b>

M/s. Jaico Automobile Engineering Co. Pvt. Ltd., No. 9/10, II Stage, D.K. Industrial Area, Mahadevapura, Bengaluru – 560 048. PAN: AAACJ5640E	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle-11(5), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Smt. Sheetal, Advocate
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	17-09-2021
Date of Pronouncement	:	20-10-2021

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present penalty appeal is filed by assessee against order dated 17/12/2014 passed by the Ld.CIT(A)-4, Bangalore by order dated 17.12.2014 for Assessment Year 2011-12 on following grounds of appeal:

*“1. The learned CIT (Appeals) erred in upholding the levy of penalty under Section 271(1)(c) of the Act in respect of the impugned addition' made with regard to disallowance of provision of interest on advances to related parties, disallowance of miscellaneous balances written off*

*and finally belated payment of employees contribution towards PF and ESIC.*

*2. The learned CIT (Appeals) failed to appreciate that the show cause notice issued for levy of penalty being defective, penalty was not exigible. Though specific averments have been made in this regard which have been noticed by the CIT (Appeals), the CIT (Appeals) erred in not giving a finding while sustaining the penalty and accordingly the penalty levied is opposed to law and principles of natural justice and accordingly the same is liable to be deleted.*

*3. The learned CIT (Appeals) erred in not following the judgment of the jurisdictional High Court in the case of Manjunatha Cotton & Ginning Factory even though the same was cited before him and consequently the order of the CIT (Appeals) is opposed to law and liable to be set aside.*

*4. Without prejudice, the learned CIT (Appeals) ought to have appreciated that mere disallowance of the claim as made by the Appellant was not sufficient to justify the levy of penalty when the explanation given by the Appellant was not proved to be false and consequently the penalty as confirmed is opposed to law and liable to be cancelled.*

*5. The learned CIT (Appeals) ought to have accepted the detailed submission made by the Appellant and the explanation offered before the AO and ought to have refrained from confirming the levy of penalty under Section 271(1)(c) of the Act.*

*6. Without prejudice, the penalty as confirmed by the learned CIT (Appeals) is arbitrary, excessive and ought to be reduced substantially. ,*

*7. For these and other grounds that may be urged at the time of hearing of the appeal the Appellant prays that the appeal may be allowed.”*

**Brief facts of the case are as under:**

**2.** Assessee is engaged in the business of fabricating of Bus and bus bodies. It filed its return of income on 30/09/2011 declaring loss of ₹ 5,68,40,428/-. Ld.AO in the assessment order passed under section 143(3) of the Act, dated 28/03/2014 made additions revising loss at Rs.2,83,54,183/-.

**3.** Subsequently, penalty notice was issued to assessee on 28/03/2014 under section 271(1)(c) in respect of following additions made by the Ld.AO:

provision for interest: 1,73,84,644/-

miscellaneous balances written of: 96,37,016/

disallowance under section 43B: 1,88,431/-.

**4.** The Ld.AO levied penalty on above disallowances for concealment and furnishing inaccurate particulars of income.

Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

**5.** The Ld.CIT(A) upheld the penalty levied by observing that relevant information was not made available to substantiate the claim.

Aggrieved by the order of Ld.CIT(A) assessee is in appeal before us now.

**6.** We have heard the submissions advanced by both sides in the light of records placed before us.

At the outset, the Ld.AR placed reliance on the decision of *Hon'ble Supreme Court* in case of *CIT vs. Manjunatha Cotton and Ginning Factory* reported in 359 ITR 565.

On the contrary the Ld.Sr.DR submitted that, merely because the notice under section 274 did not strike off irrelevant portion, does not vitiate the penalty proceedings. He submitted that the penalty is levied under both the limbs and therefore the notice issued by the Ld.AO cannot be quashed.

We have perused the submissions advanced by both sides in light of records placed before us.

Following are the observations of the Ld.AO in respect of disallowance on which the penalty is levied:

*“7.3. The AO has clearly noted in the Assessment-order that, an amount of Rs. 1,73,84,644/- has been debited to the P & L account. If the assessee's aforesaid submission regarding the issue were to be relied upon, then the amount of difference, (Rs. 49,25,576/-) should have been debited to the P & Account, which is not the case. The assessee also ought to have added-back the 'provision' amount to its final-computation of income, as the same was admittedly not paid during the year. The assessee's contentions on this account are therefore not supported by evidence, either in form, of relevant income-computation or specific accounting treatment in the subsequent period, as claimed, in its written-submissions. In the facts and circumstances, the disallowance of the 'provision' of Rs.1,73,84,644/- debited to the P & L account as expenditure-claim during the current year, is upheld. The Assessee's Grounds of Appeal in this respect therefore, do not succeed*

*8.2. The assessee has not furnished any specific justification against the aforesaid disallowance. Except for certain general statements made in the Grounds of Appeal / statement of facts, no further explanation in this regard has been addressed by the appellant. It is seen from the written submission filed, during the appeal proceedings that, there is no elaboration or reasoning given by the Appellant, against the disallowance of Rs. 3,98,792/- on account of interest charge @ 12 % on the advances made to group-entities. In the facts and circumstances, the disallowance is upheld.*

*9.2. The assessee has not made adequate submissions in regard to this disallowance, before the AO. AO noted in the assessment order, the amounts written-off during the current year, have not been claimed / reflected as doubtful or bud, in the preceding years. The AO has not been convinced of the veracity of this claim by way of any relevant documents or explanation as to why the amounts were written-off and why debts have suddenly been given up. During the present appeal proceedings certain debtor lists have been annexed to the written submission dated 29/02/2016. But, there is no explanatory note or justification provided in respect of any of the written-off transactions. In these facts and circumstances, the AO's contention cannot be summarily set-aside. The disallowance of Rs. 96,37,016/- is accordingly upheld.”*

**7.** From the above it is clear that, disallowance's were made for want of explanation by assessee. It is not the case of revenue that it is a wrong claim made by assessee. Under such circumstances

both the limbs under section 271(1)(c) of the Act cannot be initiated. *Hon'ble Supreme Court* in the case of *Manjunatha Cotton and Ginning Factory (supra)* observed that nature of penalty is to be analysed vis-à-vis each addition/disallowances made by assessing officer in the assessment order.

**7.1** Looking into the reason for disallowance of provision of interest, we observe that the Ld.AO did not accept the manner in which the provision was debited to P&L account. There was difference of opinion in the stand taken by assessee vis-à-vis the Ld.AO in accounting the provision. The assessing officer rejected the treatment of provision.

**7.2** In respect of belated payment of employees contribution, we note that this issue stands settled that in the event the payment is made before the due date of filing of returns under section 139(1) of the act, no disallowance could be made. Under such circumstances this issue is debatable and therefore levy of penalty is unwarranted.

**7.3** In respect of interest advanced to related parties, the Ld.AO disallowed for the reason that, assessee did not elaborate the reasons to substantiate the interest charged at 12% on advances made to intergroup entities.

**7.4** In respect of the miscellaneous balances written off, the addition was made as no justification was provided. *Hon'ble Supreme Court* and various High Courts have held that writing off is a commercial decision by a businessman, which cannot be questioned by the authorities, unless it is found to be false or

bogus. In present facts, there is no such observation by the Ld.AO.

**11.** In our view the disallowances, made in the assessment order does not call for levy of penalty. The conditions necessary to support the levy of penalty in respect of the above items does not stand satisfied and therefore deserves to be deleted.

**Accordingly the grounds raised by assessee stands allowed.**

**In the result, appeal filed by assessee stands allowed.**

Order pronounced in the open court on 20<sup>th</sup> October, 2021

Sd/-  
**(CHANDRA POOJARI)**  
**Accountant Member**

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Bangalore,  
Dated, the 20<sup>th</sup> October, 2021.  
/MS/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.