IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE M.S.RAMESH

T.C.A.No.612 of 2016

Rattha Citadines Boulevard Chennai Pvt. Ltd.,
(Now Known as 'Archean Reality
Private Limited'),
No.37, TTK Road,
Alwarpet,
Chennai – 600018. ...Appellant
(PAN AADCR 4383D)

Vs.

The Deputy Commissioner of Income-Tax,
Corporate Circle 5(1),
Chennai – 600034. ...Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench "C", Chennai in I.T.A.No.243/Mds/2015 for the Assessment Year 2010-2011.

For Appellant : Mr.G.Baskar
For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

JUDGMENT

(Made by DR.VINEET KOTHARI,J)

The Assessee has filed this appeal under Section 260A of the Income Tax Act, raising the following substantial question of law arising from the order of the learned Income Tax Appellate Tribunal dated 31.07.2015 for A.Y. 2010-11, whereby the learned Tribunal, setting aside the order of the first Appellate Authority, Commissioner of Income Tax (Appeals), restored the penalty of Rs.43,60,239/- imposed by the Assessing Authority vide order dated 31.12.2015 passed under Section 154 of the Act, increasing the penalty under Section 271(1)(c) of the Act earlier imposed vide its order dated 26.09.2013 to the extent of Rs.39,63,854/-.

2. The findings of the learned Income Tax Appellate Tribunal in the order impugned before us are quoted below for ready reference:-

> *21. On the facts of the present case, we are dealing with not only an inadmissible claim of deduction but a claim of deduction which is contrary to the plain words of the statute and on*

which no two opinions are possible. This situation cannot be equated with a claim of deduction under section 14 A in respect of which, as Supreme Court had observed in the case of Reliance Petroproducts (supra), the assessee's plea was that "that the disallowance made by the Assessing Authority in the assessment order under section 143(3) of the Act were solely on account of different views taken on the same set of facts and, therefore, they could, at the most, be termed as difference of opinion but nothing to do with the concealment of income or furnishing of inaccurate particulars of such income". In the present case, related quantum addition is not on account of different views being taken on the same set of facts but on account of plain words of the statute which admit no ambiguity. The assessee does not, therefore, derive any help from Supreme Court's judgment in the case of Reliance Petroproducts (supra) either. We reject the same.

22. Learned counsel for the assessee has also laid a lot of emphasis on the fact that the assessee's explanation has not been found 'false' but then

this plea overlooks the fact that when an assessee's explanation is found 'false', this case falls in category (A) of Explanation 1 to Section 271(1)(c) whereas the present case is in category (B) thereof and it covers a situation when assessee offers an explanation and not able to prove its bona fides. These two situations are mutually exclusive situation and just because conditions in part (A) of Explanation 1 are not satisfied, the revenue's case in (B) also does not come to an end. The plea of the assessee does not, therefore, acceptable.

23. Further, we also place reliance on the judgment of Supreme Court in the case of ***Mak Data (Pvt) Ltd. vs. CIT 358 ITR 593****, wherein it was held that*

> *"the assessee had only stated that it had* ***surrendered the additional sum of 40,74,000 to avoid litigation, buy peace and to channelize*** *the energy and resources towards productive work and to make amicable settlement with the Income-tax Department.* ***The statute did not recognize those types of defences under Explanation 1 to Section 271(1)(c) of the Act. The surrender of income in this case was not***

voluntary in the sense *that the offer of surrender was made in view of detection by the Assessing Officer in the search conducted in the sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it was clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The Assessing Officer had recorded a categorical finding that he was satisfied that the assessee had concealed the true particulars of income and was liable for penalty proceedings under section 271 read with section 274 of the Act.* ***There was no illegality in the Department initiating penalty proceedings****".*

24. Thus, in the present case, claim of the assessee towards administrative expenditure at Rs.2,97,275/- and finance charges at

Rs.1,25,30,730/- as business expenditure is not at all admissible as the assessee has not commenced business during the relevant financial year under consideration. The Assessing Officer is of the view that the expenditure is not based on any sound reason as the assessee was fully aware of the facts that it is not revenue expenditure when it had filed its original return of income. Therefore, it cannot be said that the assessee discovered any omission or wrong statement subsequent of filing of original return of income on 14.10.2010. Being so, it cannot be believed that the assessee chose to revise its earlier return consequent upon knowing that there are omissions or wrong statements in the original return of income. The assessee is having full knowledge about the wrong claim made by it and therefore, it cannot take a plea that the error is bona fide and it is to be condoned.

25. Being so in the present case the impugned penalty is not in respect of a bogus claim but in respect of making a claim which is patently inadmissible. In such a situation, it is difficult to understand, much less approve, this plea of the

assessee that the assessee as bona fide in claiming the expenditure. In our opinion levy of penalty by Assessing Officer u/s 271(1)(c) of the Act is justified and accordingly, we reverse the order of the Commissioner of Income Tax (Appeals) and restore that of the Assessing Officer.

3. The question of law which arises for our consideration and as suggested in the name of appeal is as under:-

"Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in reversing the order of the Commissioner of Income-Tax (Appeals) and restoring the levy of penalty u/s 271(1)(c) of the Income Tax Act?"

4. The first Appellate Authority, namely Commissioner of Income Tax (Appeals), had allowed the appeal of the Assessee vide its order dated 07.10.2014 and had set aside the penalty under Section 271(1)(c) of the Act with the following observations:-

8. I have carefully considered the submissions of the appellant. The appellant has claimed the business losses incurred by it on the basis of the Audited Statements of Account filed along with the Return of Income. In making such a claim, the appellant was under the bona fide belief that the said expenditure is allowable as revenue expenditure on the basis of the Audited Statements of Account and also the appellant has already initiated steps to commence its activities. However, the Assessing Officer has followed the case of Tuticorin Alkali Chemicals & Fertilizers Limited, through the facts are different from the case of the appellant, and disallowed the claim of the appellant. The disallowance of loss in the assessment made by the AO is only on account of difference of opinion between the appellant and the AO which is a debatable issue. Thus, the appellant has not furnished any inaccurate particulars for the claim of loss and the loss has been claimed on the basis of the Profit & Loss account forming part of the Audited Statements of Account filed along with the Return of Income.

9. The AR of the appellant, in his written submissions, has stated that levy of penalty is not a necessary concomitant of assessment proceedings. ***Both the proceedings are different in nature and the findings in assessment proceedings are not conclusive in penalty proceedings.*** *Before the assessee is held liable for furnishing inaccurate particulars for claim of expenditure as revenue expenditure, it has to be independently found in penalty proceedings that the appellant* ***has consciously furnished inaccurate proceedings for claiming such expenditure as revenue expenditure with a malafide intention to evade tax****. The AR of the appellant has relied on the decision of the Apex Court in the case of* ***CIT vs Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158****, the relevant portion of which is reproduced hereunder:*

'.....In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax,

Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that (page 13 of 317 ITR):

"13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."

Their Lordships, after considering various decisions including Dilip N.Shroff v. Jt.CIT [2007] 291 ITR 5191 (SC) and Dharamendra Textile Processors' case (supra) have observed and held (page 158 headnotes) as under:

"A glance at the provisions of Section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in Section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be

invoked. By no stretch of imagination can making an incorrect claim tantamount to furnish-ing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, 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. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under Section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

Respectfully following the above decision of the Apex Court and keeping in view that it is not the case of the AO that the appellant had not filed the complete particulars of its claim of expenditure *or it is not the case of bona fide belief or the explanation offered by the appellant was found to be false or untrue, I am of the view that making a wrong claim is not at par with the*

concealment or giving inaccurate information which may call for levy of penalty under Section 271(1)(c) of the Act. Therefore, I am fortified by the argument of the appellant that mere making of a claim which is not sustainable in law, by itself, would not tantamount to furnishing inaccurate particulars for such claim. It is not proven on record by the AO that the appellant has furnished inaccurate particulars for claim of loss, as the appellant has accounted the amount spent towards interest and other administrative expenses and claimed the same as expenditure in the Profit & Loss account forming part of the Audited Statements of Account filed along with the Return of Income under the bonafide belief that the said expenditure is revenue in nature. It is only a difference of opinion and no inaccurate particulars were furnished by the appellant. Also, the AR has relied on the decision of the Hon'ble Jurisdictional High Court in the case of CIT, Chennai – IV vs. M/s.Gem Granites (Karnataka) in Tax Case (Appeal) No.504 of 2009 dated 12.11.2013 and also following the decision of the

Apex Court in the case of Reliance Petroproducts Pvt. Ltd. supra, wherein it was observed that for sustaining penalty, the bona fide explanation of the assessee must be looked into, so that the contumacious conduct of the assessee for the purpose of sustaining the penalty would be taken as condition that is the main requirement under Section 271(1)(c) of the Act for attracting penal provisions under the Act. Where information given in the return is found to be correct and accurate, the assessee cannot be held to be guilty of furnishing inaccurate particulars. In the instant case under consideration, the Assessing Officer failed to satisfy that the appellant has concealed the particulars of his income or furnished inaccurate particulars of such income. This view also finds support from the decisions in CIT vs. Sidharth Enterprises (2010) 322 ITR 80 (P&H) and CIT vs. Sahabad Co-op Sugar Mills Ltd (2010) 322 ITR 73 (P&H).

10. ***I am in agreement with the submissions of the AR as the appellant who had furnished all the details of its expenditure as well as income in***

its Return, which details, in themselves were not found to be inaccurate nor could be viewed as the concealment of income on its part. *It was up to the AO to accept its claim in the return or not. Merely because the appellant had claimed the expenditure, which claim was not accepted or was not acceptable to the AO that by itself would not attract penalty under Section 271(1)(c) of the Act. If the contention of the AO is accepted, then in case of every return where the claim made is not accepted by AO for any reason, the Appellant will invite penalty under Section 271(1)(c) of the Act. That is clearly not the intention of the legislature. In the instant case the income assessed was only a notional income computed by the Assessing Officer by restating the Foreign Currency Liability at the end of the year in compliance with Accounting Standards which cannot be treated as concealment of income or furnishing of inaccurate particulars of such income. The expenditure claimed by the appellant was under bona fide belief that the said expenditure is a revenue expenditure based on the Audited*

Statements of Accounts which cannot be termed as furnishing of inaccurate particulars of such income. Therefore, the levy of penalty u/s 271(1)(c) is not called for.

11. Keeping in view of the various submissions and also supporting case laws filed by the AR of the appellant and respectfully following the ratios held in the case laws mentioned, the Assessing Officer is not justified in levying of penalty in the case under consideration and accordingly direced to ***delete*** *the levy of penalty. The appellant succeeds on this ground of appeal.*

5. The learned counsel for the Assessee Mr.G.Baskar submitted that the Assessee originally filed its Return of Income for A.Y. 2010-11 on 14.10.2010 declaring "Nil" income. The Assessee subsequently filed a Revised Return on 18.03.2011 and while disclosing a taxable income as per the audit report which was filed with the original returns also to the extent of Rs.4,76,517/- as the foreign exchange gain, which was earned by the

Assessee during this assessment year even prior to commencement of its business claimed against the said income, the deduction of the expenditure to the extent of Rs.2,97,275/- being operating and administrative expenses and Rs.1,25,30,730/- as finance charges being interest on loan taken by the Assessee and thus in the Revised Return, a net loss of Rs.1,23,51,488/- was shown in the Revised Return. The Assessing Authority however said that these two expenditures claimed by the Assessee were not allowable expenditure, because the Assessee had not yet commenced its regular business operations. Therefore, the Assessing Authority, vide its Assessment Order dated **27.03.2013**, imposed income tax to the extent of Rs.2,00,240/- on said foreign exchange gains of Rs.4,76,517/-, which the Assessee accepted and accordingly paid the said amount of tax of Rs.2,00,240/- and did not prefer any appeal against the said Assessment Order. However, the Assessing Authority separately initiated penalty proceedings under Section 271(1)(c) of the Act for the alleged concealment/filing of inaccurate particulars by the Assessee and imposed the said penalty of Rs.39,63,853/- under Section 271(1)(c) of the Act, vide

its order dated **26.09.2013** with the following observations:-

> *"As is evident from the above, the Assessee has claimed sums which the Assessee was well aware of the falsity of the claim even at the time of filing of the Return of Income. Infact as rightly concluded by the AO that the assessee itself was not convinced initially of claiming the loss and had filed the revised return claiming the loss as an afterthought. The Assessee could not prove its claim when questioned on the same by the Assessing Officer during the Assessment proceedings. The Assessee has debited amounts which the Assessee was well aware of the falsity of the claim even at the time of filing of the Return of Income. Thus the Assessee has submitted particulars which if not found and verified during the proceedings u/s143(3), would have escaped tax. They are not merely wrong claims but inaccurate particulars which is clear from the facts brought out during the course of assessment proceedings.*
>
> *In view of the above, I am satisfied that this is a fit case for levy of penalty u/s.271(1)(c) of the Act,*

for furnishing inaccurate particulars of Income and concealment of Income. ***The tax sought to be evaded works out to Rs.39,63,854/-. The minimum penalty leviable is 100% of the tax sought to be evaded i.e. Rs.39,63,854/-*** *and the maximum penalty is 300% of the tax sought to be evaded i.e. Rs.1,18,91,562/-.* ***Considering the facts of the case, I hereby direct the Assessee to pay by way of penalty of Rs.39,63,854/-*** *(Rupees Thirty Nine Lakhs Sixty Three Thousand Eight Hundred and Fifty Four Only)* ***which is 100% of tax sought to be evaded as worked out below****:-*

Reduction of loss as discussed above	*1,28,28,005*
Tax thereon @ 30%	*38,48,402*
Add: Surcharge	*Nil*
Add: Cess @ 3%	*1,15,452*
Total Tax sought to be evaded	*39,63,854*
Amount of penalty levied @ 100%	*39,63,854*

(SARATHA.G IRS)
Deputy Commissioner of Income Tax,
Company Circle – V(3), Chennai"

6. He submitted that the Assessing Authority also resorted to Section

154 to enhance the said penalty amount later on under Section 154 of the Act vide order dated 31.12.2015 and further imposing surcharge and education cess on the said deemed evaded tax at the rate of 30% on "deemed income" in the form of "reduction of loss" as discussed in the penalty order dated 26.09.2013 and he increased the amount of penalty at the rate of 100% of alleged evasion of tax to the extent of Rs.43,60,239/-. The appeal of the Assessee against the said order under Section 154 however came to be dismissed by the learned Commissioner (Appeals) on 29.03.2019.

7. The learned counsel for the Assessee submitted that since the audited Balance Sheet in which the said figures of income and expenditure was duly shown in respective schedule 7, 8 and 9 of the Balance Sheet and the same was filed by the Assessee with the original Return of Income itself, there was no concealment or filing of inaccurate particulars on the part of the Assessee and merely because the claim of the Assessee of the deduction of expenditure in the form of finance charges and administrative

expenses was not allowed by the Assessing Authority, the Assessee could not be penalized by way of penalty under Section 271(1)(c) of the Act, specially when he had already accepted such assessment and had paid the tax as assessed by the authority voluntarily. He relied upon the decision of the Hon'ble Supreme Court in the case of ***CIT vs Reliance Petroproducts Pvt. Ltd. (322 ITR 158)***, which was relied upon by the learned Commissioner of Income Tax (Appeals) also to submit that even if the claim of expenditure by the Assessee is taken to be wrong claim made, it does not amount to concealment of income or filing of inaccurate particulars and therefore, no penalty could have been imposed on the Assessee.

8. On the other hand, the learned Senior Standing Counsel for the Revenue Mr.T.Ravikumar relied upon large number of case laws which are enumerated below and sought to urge that Assessee deliberately made the claim of such expenses against the income disclosed in the revised return and the very fact that originally Assessee declared "Nil" income, shows that

he deliberately filed inaccurate particulars in his Return of Income and was therefore liable to be penalized under Section 271(1)(c) of the Act. He submitted that Explanation 1 to Section 271(1)(c) of the Act clearly stipulates that where the Assessee does not furnish any explanation or fails to substantiate his claim before the Assessing Authority, then it is deemed to be a concealment or filing of inaccurate particulars, inviting penalty under Section 271(1)(c) of the Act. The case laws relied upon by the learned counsel for the Revenue, though entirely distinguishable on facts of the present case, are listed under:-

(i) *MAK Data vs CIT – 358 ITR 593 – SC*

(ii) *NG Technologies vs CIT – 240 Taxman 6 (SC)*

(iii) *CIT Vs NG Technologies – 370 ITR 7 (Del)*

(iv) *Jeevan Lal & Sons vs ACIT – 262 Taxman 23 (SC)*

(v) *Hamirtur District Co Operative Bank Ltd vs CIT – 269 Taxman 201 (SC)*

(vi) *Hamirtur District Co Operative Bank Ltd vs CIT – 415 ITR 184 (All)*

(vii) *Prasanna Dugar vs CIT – 373 ITR 681 (SC)*

(viii) *CIT vs Prasanna Dugar – 371 ITR 19 (Cal)*

(ix) *Sundaram Finance Limited – 93 Taxman.com 253 (Mad)*

(x) *Sundaram Finance Ltd vs ACIT – 259 Taxman 220 SC*

(xi) *Express Infrastructure P Ltd vs DCIT – TCA No.783 of 2018*

(xii) *Tuticorin Alkalies and Fertilizers Ltd vs CIT – 227 ITR 172 (SC)*

(xiii) *Magna Credit & Financial Services Ltd vs CIT – 408 ITR 621 (Mds) and*

(xiv) *Samtel India Ltd vs CIT, Delhi – 25 Taxmann.com page 535 (SC)*

9. We have heard the learned counsels at length and perused the records and case laws cited.

10. Section 271(1)(c) of the Act, to its relevant extent, is quoted below for ready reference:-

> ***Failure to furnish returns, comply with notices, concealment of income, etc.***
>
> ***271.*** *(1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—*
>
> *(a) [***]*

(b) has failed to comply with a notice under sub-section (2) of Section 115WD or under sub-section (2) of Section 115WE or under sub-section (1) of Section 142 or sub-section (2) of Section 143 or fails to comply with a direction issued under sub-section (2A) of Section 142, or

(c) ***has concealed the particulars of his income or furnished inaccurate particulars of such income,*** *or*

(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,

he may direct *that such person shall pay by way of penalty,—*

(i) [***]

(ii) in the cases referred to in clause (b), in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure ;

(iii) in the cases referred to in clause (c) or clause (d), 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 reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.***

Explanation 1.*—Where in respect of any facts material to the computation of the total income of any person under this Act,—*

(A) such person ***fails to offer an explanation*** *or* ***offers an explanation which is found*** *by the Assessing Officer or the Commissioner (Appeals)*

or the Principal Commissioner or Commissioner ***to be false****, or*

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

11. Having heard the learned counsel, we are clearly of the opinion that the appeal filed by the Assessee deserves to be allowed and in our considered opinion, the learned Tribunal has fallen into error in restoring the penalty under Section 271(1)(c) of the Act, after setting aside the well reasoned order of the first Appellate Authority, who had rightly deleted the penalty imposed upon the Assessee on these facts. The facts speak for themselves about the two basic requirements to be fulfilled for penalty under Section 271(1)(c) of the Act, namely (i) concealment of income and (ii) filing of inaccurate particulars by the Assessee. If the Assessee had

declared "Nil" income in its original return of income, as it had not commenced the business, but filed revised return of income to fairly disclose its foreign exchange gain made during the year, even prior to commencement of business, but, at the same time bona fide claimed the expenditure incurred during that year in the form of interest or finance charges or administrative expenses against such income, and disclosed all these facts in audited Balance Sheet filed with the Return of Income and filed a Loss Return before the authority, the authority concerned was entitled to take a different view of the matter that such expenditure was not allowable, as the Assessee had not commenced its business operations and on that issue, there was no serious dispute from the side of the learned counsel for the Assessee before us also and that is why, the Assessee seems to have accepted the income tax liability of Rs.2,00,240/- fixed upon him and paid the said tax without a demur.

12. The considerations for imposition of penalty under Section 271(1)(c) of the Act are however entirely different. It requires existence of

mens rea on the part of the Assessee and either of the twin conditions of (i) concealment of income or (ii) filing of inaccurate particulars by Assessee, are required to be satisfied and the burden of proving that lies upon the revenue authority and not on the Assessee. Merely because the claim of expenditure made by the Assessee is found to be a wrong claim and is disallowed, it does not *per se* attract imposition of penalty under Section 271(1)(c) of the Act.

13. From the extract of the penalty order above, curiously, the learned Assessing Authority, namely Deputy Commissioner of Income Tax, Ms. Saratha.G, IRS, in her Assessment Order **"reduced the loss"** of the Assessee, which was claimed in the form of expenditure and interest charges by disallowing the said claim to the extent of Rs.1,28,28,005/-, on which 30% tax thereon **"would have"** been Rs.38,48,402/- and therefore, with the cess of 3% thereon, the 100% penalty would work out to Rs.39,63,854/. One fails to understand how the **"reduction of loss"** in the Assessment order would amount to **"income"** on which tax payment could

have been evaded by Assessee. **No positive income** could result by such disallowance and therefore, no tax in fact could ever be imposed on such assumed **"reduction of loss"** considered by the Assessing Authority. This is just a hypothetical figure of "income" taken by the authority concerned in order to impose somehow penalty under Section 271(1)(c) upon the Assessee.

14. The tax on the actual income of Rs.4,76,517/-, which was foreign exchange gain, was already imposed on the Assessee to the extent of Rs.2,00,240/- by the same Assessment Order and have been already paid by the Assessee. Therefore, the Assessing Authority could not have adopted these imaginary figures of alleged evaded income tax on the "reduction of loss" as claimed in the Revised Return filed by the Assessee and as the basis for "assumed income tax liability" thereon, 100% penalty thereon could not have been imposed.

15. The concerned authority has not only displayed her lack of

understanding of mathematics involved in computing income (a positive figure), but has shown complete lack of understanding of the penalty provisions by passing such an order. As if not contented with that, he even passed a rectification order to enhance the amount of penalty to Rs.43,60,239/-, by invoking Section 154 which applies only for rectification of mistakes apparent on the face of record and enhanced the said penalty to Rs.43,60,239/-. Of course, the authority this time was different and one Mr.C.Balakrishnan, Income Tax Officer, Corporate Ward-1(1), Chennai did these honours to the Assessee. What a heartless and headless application of penalty provisions by the authorities concerned in this case!!

16. The Assessee was absolutely bona fide in filing the Revised Return and disclosing income and had also made a bona fide claim of deduction in the form of administrative expenses and interest or finance charges. Even if these expenditure were not to be allowed, how could Assessee be blamed for filing inaccurate particulars or concealment of

income. Whatever he had to file was already on the record of the Assessing Authority, right with the original return. The authorities concerned have not arrived at any figures or disclosures from any material outside the record, which was furnished to them by the Assessee. Therefore, the blame of concealment or filing of inaccurate particulars could not be simply laid at the doors of the Assessee.

17. The misfortune of the Assessees at the hands of such errant officials is that such authorities consider imposition of penalties under Section 271(1)(c) of the Act as a regular legally obligatory source of income tax to the Revenue Department and do not distinguish between the penalty provisions and tax provisions, totally being unaware of the different schemes and purpose of such two provisions. It is indeed pitiable that the final appellate body, the Income Tax Appellate Tribunal was also caught in the same spirit of wrong interpretation of law and a justified order passed by the first appellate authority, namely CIT (Appeals), was unnecessarily reversed by totally misconstruing and misapplying the judgment of Hon'ble

Supreme Court of India in the case of ***MAK Data vs CIT (358 ITR 543)***. Not only the facts of ***MAK Data***, but all other cases cited by the learned counsel for the Revenue, are absolutely distinguishable on facts and none of these cases uphold imposition of penalty on "reduction of loss" treated as income concealed in which tax is sought to be evaded as involved in this case and we do not appreciate unnecessary citing of large number of cases without appropriate application of the same to the facts of the case in hand checked by the learned counsels. On a click of mouse button on the law sites, for Section 271(1)(c) Penalty, one could download hundreds of judgments. That is where the duty of the counsel, who argue on behalf of either side before the Court is to separate rice from the puff or wheat from the chaff, as it were. But that long painful exercise on the part of the learned Advocates seems to be an exercise of bygone era. Perhaps, they are under a mistaken belief that citing of more number of cases would make their arguments more weighty. On the contrary, they merely waste the time of the Court.

18. In the present case, we are of very clear and firm view that it was not at all a fit case for the imposition of penalty under Section 271(1)(c) of the Act as the basic requirement for invoking that provision are not at all satisfied in the present case and the appeal of the Assessee therefore deserves to be allowed. The same is accordingly allowed and the question of law framed above is answered in favour of the Assessee and against the revenue. No costs.

[V.K.,J.] **[M.S.R.,J.]**
30.11.2020

Index:Yes
Speaking order
hvk

DR.VINEET KOTHARI,J.
and
M.S.RAMESH,J.

hvk

To

1. The Deputy Commissioner of Income-Tax,
   Corporate Circle 5(1),
   Chennai – 600034.

2. The Income Tax Appellate Tribunal,
   Bench 'C', Chennai.

T.C.A.No.612 of 2016

30.11.2020