

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.6027/Del/2019
Assessment Year: 2012-13

Sabharwal Food Industries Pvt. Ltd., A-309, Basement, New Subzi Mandi, Azadpur, Delhi 110033 PAN AABCS 0763 L	vs.	The DCIT, Circle-22(1), New Delhi 110001
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Tiwari, Adv. Ms. Tanya, Adv.
Revenue For :	Ms. Rajareswari R, Sr. DR

Date of Hearing :	20.03.2023
Date of Pronouncement :	31.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-8, New Delhi dated 24.04.2019 for AY 2012-13.

2. First of all, the Id. counsel of assessee submitted the assessee does not want to press its application dated 26.12.2022 for admission of additional ground hence, the same is dismissed has not pressed. The ground of assessee is as follows:-

1. The Ld. AO has erred in levying penalty as the payment in cash was made for hospital bills as the hospitals did not accept payment through cheques.

3. The Id. counsel of assessee submitted that the assessee has not furnished inaccurate particulars of income as the assessee has fully reported and disclosed all the particulars on the bonafide and reasonable believe. The Id. counsel submitted that the assessee had actually made expenses of Rs. 5,33,025/- at Fortis Hospital and Escort Hearth Institute for the treatment of employees and directors of the assessee company under commercial expediency which has not been dispute or doubted by the authorities below. The Id. counsel submitted that the disallowance has been made solely on the ground that cash payment in excess of Rs. 20,000 has been made, the impugned

addition under section 40A(3) r.w. Rule 6DD was made by the Id. Assessing Officer and upheld by the Id. CIT(A), without appreciating the facts and circumstances in which the payments were made. The Id. counsel submitted that the genuineness of the expenditure has not been dispute by the authorities below and the expenditures in cash was made under serious medical condition at different times wherein there was no option but to make payment in cash due to medical emergencies during odd hours. Placing reliance on the judgment of Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. vs. CIT [2010] 189 taxman 322 (SC). The Id. counsel submitted that the claim of assessee was dismissed on technical ground of section 40A(3) of the Act, which does not amount to either furnishing of inaccurate particulars of income or concealing of particular of income therefore penalty u/s. 271(1)(c) of the Act may kindly be deleted.

4. The Id. Senior DR strongly supported the order of the authorities below and submitted that the claim of assessee was rightly disallowed as the assessee made payment in cash in excess of Rs. 20,000 on various occasion therefore in consequent to the said disallowance penalty u/s. 271(1)(c) has to be levied by the Assessing Officer and therefore penalty may kindly be upheld.

5. On careful consideration of above rival submissions, first of all, from the assessment as well as first appellate order, we note that the assessee claimed expenditure of Rs. 5,33,025/- on account of medical expenditure on the employees and directors of the company. But said claim was disallowed by the Assessing Officer by observing that the assessee has made payment in cash in excess of Rs. 20,000/- on various occasions and made disallowance. Assessee did not carry the matter before Id. CIT(A) and paid all due taxes etc. thereon terminating the litigation on this issue. However, the Assessing Officer initiate penalty proceedings and imposed penalty by holding that the assessee has not furnish accurate particulars of its income and has thus, concealed the particular of income to the extent of Rs. 5,33,025/-. In conclusion, the Assessing Officer noted that this is a fit case for imposition of penalty for furnishing inaccurate particulars in respect of said amount. It is also pertinent to note that neither the Assessing Officer nor Id. CIT(A), in the quantum proceedings, has doubted or disputed amount of expenditure and its incurring on medical emergencies for the treatment of employees and directors of the company which falls under commercial expediency. However, the said claim was disallowed by the Assessing Officer by observing that the exceptions given in rule 6DD of I.T Rule 1962 are not applicable to the case of assessee and he made disallowance u/s. 40A(3) of the Act, on the allegation that the assessee has made cash payment exceeding Rs. 20,000/- in violation of said provision of the Act.

6. Keeping in view above factual matrix of the issue, we are of the considered opinion that the Assessing Officer was not correct and justified in holding that the assessee has not furnished accurate particulars of income and hence, concealed particulars of income and liable to be imposition of penalty u/s. 271(1)(c) of the Act on account of furnishing of inaccurate particular of income particularly in a peculiar situation in the present case that the assessee has disclosed and recorded entire amount of claim incurred on medical emergencies under commercial expediency in the books of accounts of assessee. At this juncture, we take respectful cognizance of the judgment of Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. vs. CIT(supra) wherein their Lordship speaking for the top court of India held that merely because the claim of assessee was not accepted for not found to be acceptable by the revenue authorities the penalty u/s. 271(1)(c) of the Act, cannot be levied on the assessee.

7. Since, in the present case the Assessing Officer dismissed claim of expenditure of assessee on account of violation of section 40A(3) of the Act, without raising any other allegation or ground of dismissal and hence, when the assessee disclosed and recorded entire claim on medical emergencies in its books of accounts then neither it can be alleged that assessee has furnished inaccurate particulars of income or has concealed particular of its income. Therefore in view of above, penalty u/s. 271(1)(c) cannot be held as valid and sustainable and hence we direct the Assessing Officer to delete the same.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.05.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 31st May, 2023.

Sd
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi