

as against the addition of Rs. 20.45 lakhs only. Therefore the penalty levied under section 271(1)(c) of the Income-tax Act, 1961 was deleted.

I. T. A. No. 2343/Bang/2018 (assessment year 2009-10).

Ravishankar S. V., Advocate, for the assessee.

M. Rajasekhar, Additional Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : <http://www.taxlawsonline.com/sn>

[2019] 74 ITR (Trib) (S. N.) 11 (Bangalore)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL —
BANGALORE “A” BENCH]

DEPUTY COMMISSIONER OF INCOME-TAX

v.

AVESTHAGEN LTD.

N. V. VASUDEVAN (*Vice-President*) and
JASAN P. BOAZ (*Accountant Member*)

August 2, 2019.

SS ▶ ITA 1961, s 14A

AY ▶ 2012-13

HF ▶ Assessee

INCOME—DISALLOWANCE OF EXPENDITURE INCURRED IN RELATION TO EXEMPT INCOME—EXPRESSION “DOES NOT FORM PART OF TOTAL INCOME”—ACTUAL RECEIPT OF INCOME NOT INCLUDIBLE IN TOTAL INCOME ESSENTIAL TO ATTRACT DISALLOWANCE—ASSESSEE NOT EARNING OR RECEIVED ANY EXEMPT INCOME IN PREVIOUS YEAR RELEVANT TO ASSESSMENT YEAR—NO DISALLOWANCE COULD BE MADE—INCOME-TAX ACT, 1961, s. 14A.

Held, that the assessee had not earned or received any exempt income in the previous year relevant to the assessment year 2012-13 and this fact was recorded by the Commissioner (Appeals). The applicability of the provisions of section 14A of the Income-tax Act, 1961 was in respect of expenditure incurred in relation to the earning income not includible in total income. Section 14A envisages that there should be actual receipt of income which is not includible in the total income. Therefore, the provisions of section 14A would not apply where no exempt income is received or receivable by the assessee during the relevant previous year. No disallowance could be made.

CHEMINVEST LTD. v. CIT [2015] 378 ITR 33 (Delhi) and TANGLIN RETAIL REALITY DEVELOPMENTS P. LTD. v. Dy. CIT (I. T. A. No. 265/Bang/2016 dated March 31, 2017) *relied on*.

I. T. A. No. 2961/Bang/2018) (assessment year 2012-13).

C. H. Sundar Rao, Commissioner of Income-tax, for the Department.

None appeared for the assessee.

For the order please go to : <http://www.taxlawsonline.com/sn>

[2019] 74 ITR (Trib) (S. N.) 12 (Bangalore)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL —
BANGALORE “A” BENCH]

RAJESH ENTERPRISES

v.

INCOME-TAX OFFICER

**N. V. VASUDEVAN (Vice-President) and
JASON P. BOAZ (Accountant Member)**

August 2, 2019.

SS ▶ ITA 1961, s 271(1)(c)

AY ▶ 2008-09

HF ▶ Assessee

PENALTY—CONCEALMENT OF INCOME—FURNISHING INACCURATE PARTICULARS OF INCOME—NOTICE NOT SPECIFYING WHETHER CHARGE AGAINST ASSESSEE WAS FOR “CONCEALING PARTICULARS OF INCOME” OR “FURNISHING INACCURATE PARTICULARS OF INCOME”—ASSESSING OFFICER FAILING TO STRIKE OUT INAPPLICABLE WORDS—IMPOSITION OF PENALTY NOT VALID—INCOME-TAX ACT, 1961, s. 271(1)(c).

The assessee was in business as retail traders in food articles, essence and colouring items. It did not file a return of income for the assessment year 2008-09 within the specified date. Since there was no response to the many notices issued by the Assessing Officer, the assessment was completed ex parte under section 144 of the Income-tax Act, 1961 wherein the assessee's income was determined at Rs. 18,97,038. The assessee's appeal was dismissed by the Commissioner (Appeals). Subsequent thereto, the Assessing Officer took penalty proceedings under section 271(1)(c) and issued notices to the assessee to which there was no response. The Assessing Officer passed an ex parte order levying penalty of Rs. 4,79,920 under section 271(1)(c) for

furnishing of inaccurate particulars of income. The Commissioner (Appeals) reduced the penalty to 100 per cent. of the tax sought to be evaded. On appeal :

Held, that the show-cause notices issued in the case of the assessee under section 274 read with section 271(1)(c) did not specify the charge against the assessee as to whether it was for “concealing particulars of income” or “furnishing inaccurate particulars of income”. The show-cause notice under section 274 read with section 271(1)(c) showed the Assessing Officer had not struck out the inapplicable words. In these circumstances, the imposition of penalty could not be sustained.

I. T. A. No.16/Bang/2019 (assessment year 2008-09).

C. V. Ravishankar, Advocate, for the assessee.

Vikas Suryavamshi, Additional Commissioner of Income-tax, for the Department.

For the order please go to : <http://www.taxlawsonline.com/sn>

[2019] 74 ITR (Trib) (S. N.) 13 (Ahmedabad)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL —
AHMEDABAD “SMC” BENCH]

ALPESH GIRISHBHAI PATEL

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

**RAJPAL YADAV (Judicial Member) and
PRADIP KUMAR KEDIA (Accountant Member)**

August 2, 2019.

SS ▶ ITA 1961, s 271(1)(c)

AY ▶ 2010-11

HF ▶ Department

PENALTY—CONCEALMENT OF INCOME—ASSESSEE FAILING TO SUBSTANTIATE EXPENSES TOWARDS EXISTENCE OF CAR IN BALANCE-SHEET AND OTHER EXPENSES—EXPENDITURE INCURRED IN RELATION TO EARNING OF INCOME BY WAY OF INTEREST AND REMUNERATION FROM PARTNERSHIP TOTALLY UNPROVED—ENTRY SHOWN IN UNAUDITED BALANCE-SHEET NOT INSPIRING CONFIDENCE IN ABSENCE OF ANY TANGIBLE DOCUMENTARY EVIDENCE ADDUCED—PENALTY LEVIED JUSTIFIED—INCOME-TAX ACT, 1961, s. 271(1)(c).

Held, that in the quantum proceedings the assessee could not substantiate by any documentary evidence the claim of expenses claimed by him. Even in

the penalty proceedings, he failed to substantiate the expenses except for making generalised observations towards existence of car in the balance-sheet and incurring other expenses. The entry shown in an unaudited balance-sheet did not inspire confidence in the absence of any tangible documentary evidence adduced. The claim of the expenditure incurred in relation to earning income by way of interest and remuneration from partnership was also totally unproved in the quantum proceedings. Thus the explanation offered by the assessee could not be assumed to be bona fide. In the absence of relevant facts relating to expenses claimed, the observations of the Tribunal in the quantum proceedings would be applied. The Commissioner (Appeals) had categorically observed the claim of the assessee to be false and without any evidence. The plea of the assessee was hollow in the face of such reasoning. Therefore the penalty imposed by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961, was justified.

I. T. A. No. 3446/Ahd/2016 (assessment year 2010-11).

S. N. Divatia, authorised representative, for the assessee.

S. K. Dev, Senior Departmental representative, for the Department.

For the order please go to : <http://www.taxlawsonline.com/sn>

[2019] 74 ITR (Trib) (S. N.) 14 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI “D” BENCH]

JITENDER GUPTA

v.

INCOME-TAX OFFICER

BHAVNESH SAINI (Judicial Member) and

R. K. PANDA (Accountant Member)

August 5, 2019.

SS ▶ ITA 1961, s 68

AY ▶ 2009-10

HF ▶ Assessee/Remanded

CASH CREDIT—ASSESSEE'S ENTIRE WASTE PAPER BUSINESS DEPENDING UPON CASH PURCHASE AND CASH SALES—ASSESSING OFFICER SHOULD HAVE CONSIDER NATURE OF BUSINESS OF ASSESSEE AND SHOULD HAVE CONSIDER THAT THERE WERE JOINT ACCOUNTS WITH FAMILY MEMBERS OF ASSESSEE—ASSESSING OFFICER SHOULD HAVE ENQUIRED INTO WHETHER CASH DEPOSITED IN JOINT ACCOUNTS BELONGED TO OTHER FAMILY MEMBERS AS WELL—NO DETAILED ENQUIRY DONE AT ASSESSMENT

STAGE—ADDITION MERELY IN ABSENCE OF ASSESSEE AND ASSESSEE EXPLAINING DUE TO HIS ILL-HEALTH, EVIDENCE COULD NOT BE PRODUCED BEFORE ASSESSING OFFICER—ASSESSEE TO EXPLAIN MATTER BEFORE ASSESSING OFFICER SUPPORTED BY DOCUMENTARY EVIDENCE—INCOME-TAX ACT, 1961, s. 68.

On receipt of information from the annual information return that the assessee had deposited cash to Rs. 52,17,300 in his account with the bank, a questionnaire was issued to the assessee. In the absence of an explanation regarding the nature and source of deposits, the Assessing Officer added the amount of Rs. 52,17,300 under section 68 of the Income-tax Act, 1961. The assessee filed additional evidence before the Commissioner (Appeals) stating that he was in the business of trading in waste paper, that he received waste paper from rag pickers who collected the waste paper from various places by bicycle and sold it on cash basis only, and that he deposited the cash in the bank on regular basis. He stated that since he was not in good health, he could not attend the proceedings and only a chartered accountant appeared before the Assessing Officer and due to ill-health he could not produce the documentary evidence. The Commissioner (Appeals) considering the explanation of the assessee and the remand report of the Assessing Officer found that the assessee had made deposits in cash in various accounts for which he had given an explanation that amounts have been received on account of sale of waste paper and cash received from various persons. There was another joint account with the wife of the assessee for which a similar explanation had been given but the explanation of the assessee was not accepted. The other explanation of the assessee that there was joint account with the brother of the assessee and the amount was available on sale of property was not accepted in the absence of any evidence. The joint account with the daughter of the assessee was also not accepted and the wife's and daughter's incomes were also clubbed with the assessee's under section 64(1). The Commissioner (Appeals) rejected the explanation of the assessee and on the turnover applied 8 per cent. profit rate and computed the business income of assessee. Since the assessee had disclosed profits of Rs. 1,91,940, the balance of Rs. 86,598 was added. He ultimately confirmed the addition on account of unexplained cash credit to the extent of Rs. 52,07,498. The claim of assessee under section 80C was also disallowed for want of evidence. On appeal :

Held, that the matter required reconsideration by the Assessing Officer. The assessee was in business of trading of waste paper. The entire business depended upon cash purchase and cash sales. The Assessing Officer should have considered the nature of business of the assessee and should have considered

that there were joint accounts with the family members of the assessee and should have enquired into whether the cash deposited in the joint accounts belonged to the other family members as well. No detailed enquiry had been done at the assessment stage and addition was made merely in the absence of the assessee and the assessee had explained that due to his ill-health, the evidence could not be produced before the Assessing Officer. Therefore, one chance could be given to the assessee to explain the matter in issue before the Assessing Officer supported by documentary evidence. The orders of the authorities were set aside and the matter was restored to the Assessing Officer with a direction to redetermine the grounds of appeal raised by the assessee giving reasonable, sufficient opportunity of being heard to the assessee.

I. T. A. No. 3792/Delhi/2014 (assessment year 2009-10).

Rakesh Gupta and Somil Aggarwal, Advocates, for the assessee.

Naina Soin Kapil, Senior Departmental representative, for the Department.

For the order please go to : <http://www.taxlawsonline.com/sn>

[2019] 74 ITR (Trib) (S. N.) 16 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI “A” BENCH]

AGR MATTHEY OF WESTERN AUSTRALIA

(through representative assessee PEC Ltd.)

v.

**ASSISTANT DIRECTOR OF INCOME-TAX
(INTERNATIONAL TAXATION)**

R. K. PANDA (*Accountant Member*) and
Ms. SUCHITRA KAMBLE (*Judicial Member*)

August 5, 2019.

SS ▶ ITA 1961, s 2(28A)

AY ▶ 2005-06

HF ▶ Assessee

INCOME—INTEREST—LETTER OF CREDIT—USANCE INTEREST—ASSESSEE A SELLER OF GOLD AND BULLION AND NOMINATING AGENCY OF GOVERNMENT OF INDIA—TRANSACTION ON HIGH-SEAS BASIS—USANCE INTEREST AND DISCOUNTING CHARGES PART OF SALE TRANSACTION AS DULY ENTERED INTO BY PARTIES—INTEREST NOT INTEREST SIMPLICITER—INTEREST COST OR CREDIT PART OF COST OF GOODS—NOTIONAL INTEREST NOT TAXABLE AS INCOME FROM OTHER SOURCES—INCOME-TAX ACT, 1961, s. 2(28A).

The assessee was a seller of gold and bullion to PEC, a Government of India undertaking and a nominated agency for import of bullion, against letters of credit. Against supplies of gold by the assessee to PEC, PEC established issuance of letters of credit in favour of the assessee for 90, 180 and 360 days credit. The assessee accepted the letters of credit through its bankers in Australia. In terms of the terms of letters of credit the assessee was entitled to charge interest at the rate of LIBOR plus a margin of 0.5 per cent. per annum. There was no interest credit since within a day or two of issuance of the letter of credit by PEC's bank to the assessee, the letter of credit stood discounted by the assessee with its banker of Australia. The cost of discounting the letter of credit was identical and equal to the notional interest in respect of the letter of credit. The assessee declared an amount of Rs. 25,71,10,851 as interest income. It claimed expenses of an equal amount on account of discounting of various letters of credit received from PEC and discounted with its bankers in Australia. The expenses were disallowed by the Assessing Officer. The Commissioner (Appeals) confirmed the disallowance. On appeal :

Held, that the claim was made by PEC as representative of the assessee and it filed a nil return on the assessee's behalf, claiming interest paid by it to its own bank on the one side and deducting an identical amount against the interest retained by the assessee's bank for the period of such credit. Thus, this was not a case where a claim had been made for interest under income from other sources. The interest itself was notional and was never received by the assessee. This was properly demonstrated by the assessee from the computation of income. The live link between the interest credit and the discounting cost in terms of the modus operandi agreed upon between the parties and duly followed, the process of consummating the transaction itself was based on the accepted and normal device of the seller discounting the letter of credit to have that transaction financed by the parties' respective banks. Such interest partook of the character of the purchase price itself and could not have been brought to tax under the residual head of income from other sources. Article 7 of the Double Taxation Avoidance Agreement between India and Australia is clear in this respect. This was a transaction of sale of bullion especially in the context of a transaction of bullion sale on high-seas basis, wherein the price of the product varies on day-to-day basis, and any interest cost or credit would only form a part of the cost of goods. Reference to section 57 of the Income-tax Act, 1961 was misconceived. Therefore the notional usance interest not to be taxed as income from other sources.

CIT v. CARGILL GLOBAL TRADING (P.) LTD. [2011] 335 ITR 94 (Delhi) relied on.

I. T. A. No. 1341/Delhi/2010 (assessment year 2005-06).

S. Krishnan and *V. Raja Kumar*, Advocate, for the assessee.

G. K. Dhatt, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : <http://www.taxlawsonline.com/sn>

