

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-1166/DEL/2013
(ASSESSMENT YEAR-2008-09)**

Agarwal Developers (P) Ltd. M-1, NDSE, Part II New Delhi AAACA2520N (APPELLANT)	vs	ITO Ward 1(2), New Delhi (RESPONDENT)
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Appellant by	Sh. Sumit Goel, CA.
Respondent by	Sh. K. K. Jaiswal, DR

Date of Hearing	30.06.2016
Date of Pronouncement	27.07.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 11/1/2013 passed by CIT(A)-IV, New Delhi.

2. The grounds of appeal is as follows:-

“1. That under the facts and circumstances, no penalty u/s 271(1)(c) should have been levied on following additions, in law as on merits:-

S.No.	Addition	Amount (Rs.)
1	Disallowance out of Misc. Expenses	39000.00
2	Disallowance out of Maintenance	12410.00

	<i>Expenses</i>	
3	<i>Business advance forfeited, disallowed.</i>	415000.00
	Total	466410.00

3. The Assessing Officer made addition of Rs. 5,11,410/- in the assessment order passed u/s 143(3) of the Income Tax Act, 1961. The addition was made on account of late deposit of TDS on commission amounting to Rs. 45,000/-, disallowance of business loss claimed for forfeiture of business amounting to Rs. 4,15,000/-, disallowance of miscellaneous expenses amounting to Rs. 39,000/- and disallowance of maintenance expenses paid in cash amounting to Rs.12,410/-. The assessee company did not prefer any appeal against the assessment order passed by the Assessing Officer. Therefore, the Assessing Officer proceeded to levy the penalty u/s 271(1)(c) of the Income Tax Act, 1961 and after considering the reply of the assessee company, levied penalty of Rs.1,60,000/-.

4. Aggrieved by the penalty order, the assessee filed the appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee and confirmed the penalty in respect of three additions mentioned in the ground before this Tribunal.

5. The Ld. AR submitted that the initiation of penalty and penalty notices are defective. The Assessment Order under Section 143(3) of the Act was passed on 01.12.2010. In Assessment Order, the Assessing Officer has not specified any specific charge whether it is a case of concealment of income or furnishing of inaccurate

particulars of income. The Assessing Officer simply mentioned as “*Penalty proceedings u/s. 271(1)(c) are initiated for concealment of particulars of income/furnishing inaccurate particulars of income.....*” The Ld. AR further submitted that no show cause notices were mentioning the specific charges i.e. whether it is a case of concealment of income or furnishing of inaccurate particulars of income. As per penalty order also, in para 6(iv), page 5, the Assessing Officer mentioned as “*.....that the assessee has concealed the particulars of income/furnished inaccurate particulars of income*” Thus, initiation of penalty in Assessment Order under Section 143(3) of the Act and show cause notices are defective/invalid in law and are not competent for enabling the Assessing Officer to levy penalty under Section 271(1)(c) for not specifying the exact reason for which penalty is imposed. Thus no penalty can be levied and the penalty order is liable to be quashed. The Ld. AR relied upon the following authorities:

- i. CIT VS. MANJUNATHA COTTON AND GINNING FACTORY 359 ITR 565 (KAR.)** etc. as noted by Hon’ble Delhi ITAT in Fortune Polymers Industries (P) Ltd. (ITA No. 1036 / D / 2013) (Order dtd. 16.01.2015, On Pg. 10, Para - 8.11. (p) (q) (r) (s).
- ii. SANGHAVI SAVLA COMMODITIES BROKERS (P) LTD. VS. ACIT (ITA NO. 1746/MUM/2011) Hon’ble Mumbai ITAT Order Dtd. 22.12.2015. (PGS. 25 - 32 of compilation) (RP - 31)

iii. SUVAPRASANNA BHATACHARYA Vs. ACIT (ITA NO. 1303 / KOL / 2010) Hon'ble Kolkatta ITAT Order Dtd. 06.11.2015. (PGS. 33 - 52 of compilation) (RP - 52)

iv. FORTUNE POLYMERS INDUSTRIES (P) LTD. VS. DCIT. (ITA NO. 1036/D/2013) Hon'ble Delhi ITAT order dtd. 16.01.2015. (PGS. 53 - 64 of compilation) (RP - 62 - 64)

Thus, since, the show cause notices are invalid; all subsequent proceedings are also unsustainable in law.

6. The Ld. AR further submitted that the penalty under Section 271(1)(c) of the Act cannot be levied on merits also as on disallowances of business advance forfeited of Rs. 4,15,000/-. The assessee has been purchasing agricultural land, consolidating the same, dividing it into different sizes of lands and then to sell it. In this activity, he has to negotiate the villagers, the occupiers, the claimants of ownership and other similar persons. He has to give advances to such persons. Sometimes such advances stand forfeited by the recipients for various reasons. Such forfeited advances are claimed as expenditure. During the year, such forfeited advances claimed were of Rs. 2,43,65,000/-, out of which the AO accepted all except Rs. 4,15,000/-. All are opening advances, the genuineness of which stands accepted, in respective years. During the year, the assessee claimed the same as forfeited advances being unrecoverable. It is in the nature of bad debt which has been w/off in the books also. There is no concealment of income in respect of these forfeited advances. All facts stands

disclosed. No inaccurate particulars of income furnished. It is a case of simple disallowance of expenses under the head in which most of similar expenses have been allowed during the year as well as in earlier years (earlier year Rs. 2.80 crores). The Ld. AR relied on the following authorities:

- i. CIT VS. RELIANCE PETROPRODUCTS (P) LTD. 322ITR 158 (SC) held that “making incorrect claim does not amount to concealment of “Particulars”
- ii. CIT Vs. KEVIN PROCESS TECHNOLOGIES (P) LTD. 40 TAXMANN.COM 249 (GUI.) (ITA NO. 537/2013, ORDER DTD. 01.07.2013) held that in absence of any finding of concealment or furnishing of inaccurate particulars of income, mere rejection of assessee's claims under sections 36(l)(vii) and 37(1) relating to bad debts and prior period expenses would not lead to levy of penalty under section 271(l)(c).
- iii. CIT VS. DABWALI TRANSPORT CO. IN ITA NO. 872/ 2010, ORDER DTD. 15.03.2011 OF P&H HIGH COURT held that where expenses claimed could not be substantiated upto High Court, but the mere fact that the assessee could not furnish evidence in support of expenses claimed was not by itself enough to hold that the assessee had furnished inaccurate particulars of income.
- iv. DURGA KAMAL RICE MILLS VS. CIT 265 ITR 25 (CAL.)
- v. CIT VS. BACARDI MARTINI LTD. 288 ITR 585 (DEL.)

- vi. BURMAH SHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. VS. ITO 112 ITR 592 (CAL.)
- vii. CIT. VS. AMAR NATH 230 ITR 619 (ALL.)
- viii. CIT. VS. CALCUTTA CREDIT CORPN. 166 ITR 29 (CAL.)
- ix. CIT VS. LOTUS TRANS TRAVELS (P) LTD. 177 TAXMAN 37 (DEL.)

Thus, the disallowance of claim of deduction is not sufficient for imposition of penalty.

7. The Ld. AR further submitted in respect of disallowance of expenses paid in cash that Out of total Misc. Expenses of Rs. 84,793/-, the cash expenses of Rs. 39,000/- disallowed on the ground that no bill, vouchers produced. Out of total maintenance expenses of Rs. 8,08,027/-, disallowed Rs. 12,410/- for want of vouchers. The vouchers could not be produced since voucher file became untraceable. An assessee declaring income of Rs. 48.12 lacs cannot be expected to claim bogus expenses of Rs. 39,000/- and Rs. 12,410/-. There is no concealment of income. Thus, it is a case of disallowance of expenses incurred bonafide. Such disallowance is not in the nature of concealment. The Ld. AR relied on the following authorities:

- i. CIT VS. RELIANCE PETROPRODUCTS (P) LTD. (SUPRA) wherein it is held that no information given in return found to be

incorrect and making incorrect claim does not amount to concealment of particulars.

ii. CIT VS. DABWALI TRANSPORT CO. (SUPRA) held that the mere fact that the assessee could not furnish evidence in support of expenses claimed was not by itself enough to hold that the assessee had furnished inaccurate particulars of income.

8. The Ld. DR relied upon the order of the Assessing Officer and the CIT(A). The Ld. DR could not distinguish the case laws cited by the Ld. AR.

9. We have perused all the records and heard both the parties. In the show cause notice dated 01/12/2010 there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income as relates to business advance as it was forfeited and the same were accepted in respective years. Therefore, there was no concealment on the part of the assessee. This was a simple case of disallowance of expenses under the head in which most of smaller expenses have been allowed during the year as well as in the earlier years. Thus, the authorities cited by the Ld. AR are applicable in the present case. In respect of miscellaneous expenses, the forfeitures were not produced since they were untraceable and the same was not concealed by the assessee before the Assessing Officer. Thus, there is no concealment. Thus, Section 271(1)(c) of the Act was not correctly invoked by the Assessing Officer. The CIT(A) also overlooked the actual intention of the penalty proceedings which clearly set out

that when there is inaccurate particulars or concealment on part of the assessee, then the same should be proceeded. But in the present case, the assessee has disclosed all the factual aspects before the Assessing Officer which cannot be stated that there was concealment of particulars of income or the assessee furnished inaccurate particulars of income.

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

The order is pronounced in the open court on 27th of July, 2016.

**Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 27/07/2016

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	30.06 2016	PS
2.	Draft placed before author	30.06.2016	PS
3.	Draft proposed & placed before the second member	07.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	27.07.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	27.07.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		