आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीद प्रसाद, न्यायिक सदस्य के समक्ष।

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.700/Ahd/2014

(**निर्धारण वर्ष /** Assessment Year : 2003-04)

Dy. Commissioner of Income-Tax, Circle-8, Ahmedabad.	**बनाम**/ Vs.	Shree Krishna Keshav Laboratories Ltd. Devashish, 3rd Floor, Nr. Hotel Classic Gold, Off. C.G. Road, Navrangpura, Ahmedabad - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCS 0519 G		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Appellant by** :	Shri James Kurian, Sr.D.R.
प्रत्यर्थी की ओर से/**Respondent by** :	--None--

सुनवाई की तारीख / **Date of Hearing**	19/04/2017
घोषणा की तारीख /**Date of Pronouncement**	21/04/2017

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This appeal has been preferred by the Department is directed against the order of the Commissioner of Income Tax(Appeals)-XIV, Ahmedabad, dated 23/12/2013 for the Assessment Year (AY) 2003-04.

2. Department has been taken following Grounds of appeals:

(i) The learned Commissioner of Income-Tax (Appeals)-XI, Ahmedabad has erred in law and on facts in deleting the penalty of Rs.46,67,536/- levied u/s.271(1)(c) of the Act.

(ii) The learned Commissioner of Income-tax (Appeals)-XI, Ahmedabad has erred in law and on facts to ignore explanation 1 of provision of Section 271(1)(c) of the Act, which lays down that where Assessee's explanation in respect of any matter was not found 'satisfactory', provision of section 271(1)(c) of the Act, were attracted for furnishing inaccurate particulars of income.

3. The relevant facts as culled out from the materials on record are as under:-

In this case, the return of income for the Assessment Year 2003-04 was filed on 28/11/2003 declaring loss of Rs.1,42,91,510/-. The case was selected for scrutiny and the assessment was finalized on 28/02/2006 on total loss of Rs.4,24,070/-.

4. In this said order, the AO has among other things, disallowed an amount of Rs.1,33,35,818/- being advances written off and another sum of Rs.1,46,345/- being loans to the staff members written off. Disallowance of these items had been a subject matter of appeal filed by the assessee before the ITAT. The Hon'ble ITAT, Ahmedabad Bench 'A' in ITA No.1980/Ahd/2006 dated 21/05/2010 had deleted the disallowance of Rs.146345/- being loans to staff members written off. As regards disallowance of Rs.1,33,35,818/-, the Hon'ble ITAT has set-aside the matter to the file of the AO. While setting aside the matter, the

Hon'ble ITAT delivered following specific direction to the AO, which is reproduced below:

> *"Before us, the Learned Authorised Representative of the assessee argued that as the advance did not result in acquisition of any capital asset of enduring nature and therefore, the same ought to have been allowed as revenue deduction to the assessee. For the above proposition, he relied upon the decision in the case of Patnaik & Co. Ltd. Vs. CIT[1986] 1611TR 365 (SC) wherein it was held as under.*
>
> > *i) that, since the question referred to the High Court was farmed on the assumption that it had to be decided in the factual matrix delineated by the Tribunal, the High Court was wrong in re-appreciating the evidence: its finding had to be vacated;*
> >
> > *ii) that, on the facts, no enduring benefit was derived by the appellant by the investment;*
> >
> > *iii) that the Tribunal was right in its conclusion that the loss suffered by the appellant on the sale of the investment was a revenue loss.*
>
> *Where Government bonds or securities are purchased by an assessee with a view to increasing his business with the Government or with the object of retaining the goodwill of the authorities for the purpose of his business, the loss incurred on the sale of such bonds or securities is allowable as a business loss"*
>
> *Thus, from the above, it was observed that advance was given to boost up the existing business of the assessee and as such advance had not resulted in acquisition of asset of a capital nature, the loss suffered by the assessee was held allowable as a revenue loss by the Hon'ble Supreme Court. In the instant case, we find that the advances were given for setting up of new projects such as Rs.31,95,961/- were given to Shri Bioguard Laboratories for setting up of a new unit in U.P., Rs.34,59,684/- were given to Etexir Pharmaceuticals for machinery, raw materials, packing materials, etc. to set up the new unit,*

Rs.8,85,355/- were given to Chandra Agro Pvt. Ltd. for setting up a manufacturing unit, which did not materialize, similarly other advances were made for acquiring capital assets and new units of plants. No material was brought on record by either of the parties or the lower authorities to show that whether these projects were for the benefit of existing business or were for expansion of the existing business or was for commencement of a new and independent business. In our considered view, finding of the above fact is essential to adjudicate the issue under consideration in light of the above decision of the Hon'ble Supreme Court Thus. Thus, we have no option but to restore the matter back to the file of the Learned Assessing Officer for proper verification of the facts of the instant case and thereafter, deciding the issue afresh in light of the above decision of the Hon'ble Supreme Court. The Learned Authorised Representative of the assessee has also cited certain other decisions before us. As we have restored the issue back to the file of the Learned Assessing Officer for reconsidering his finding on the above relevant fact, we considered it fit that the other decision cited by the Learned Authorised Representative of the assessee is also to be considered by the Learned Assessing Officer. Therefore, the assessee shall be at liberty to make its entire submission before the Learned Assessing Officer who shall consider the same at the time of passing of fresh order."

5. In the re-assessment proceedings, the A.O. requested to produce full details and evidences in support of its contention in view of the specific direction of the Hon'ble ITAT. Further, the A.O. afforded various opportunities to the A.R. of the assessee and repeatedly requested for furnishing full details and evidences for verification of the facts as to whether the advances were given for setting off of new projects or were given to boost up the existing business of the assessee so that the issue could be examined in the light of the decision of Hon'ble Supreme Court in the case of Patnaik & Co. Ltd. Vs. CIT as directed by the Hon'ble

ITAT Since, no details and evidences were furnished by the assessee and the AR of the assessee requested to decide the case on the basis of the reply filed by him on 25/08/2011, the A.O. examined the issue in the light of the reply filed by the assessee and held as under:

> "Considering the above reply of the assessee and the facts and circumstances of the case, the claim of write off of advance of Rs.1,33,35,818/- as bad debts is not admissible u/s 36 of the IT. Act as these advances were given for setting up new business and for the purchase of plant and machinery and land. Hence, this cannot be claimed as bad debts u/s. 36 of the IT. Act. Therefore, it is treated as capital loss and is not allowed as a business loss. Accordingly, the cairn of bad debts of Rs.1,33,35,818/- is disallowed and added back to the total income of the assessee".

6. The AO held that these advances were given for setting up new business and for the purpose of plant and machinery and land and treated the same as capital loss and not allowed as a business loss and initiated penalty proceedings u/s. 271(1)(c) of IT Act vide notice dated 26/8/2011. In response to the said notice, the assessees vide its letter dated 28/9/2011 has replied as under:

> "We are in receipt of your notice u/s.274 r.w.s. 271 dated 26/8/2011, wherein it has been alleged that the assessee has furnished inaccurate particulars of income and the assessee has been asked to show cause why an order imposing penalty u/s.271(1)(c) should not be passed for A,Y.2003-04.
>
> In this connection, it is submitted that the penalty proceedings u/s.271(1)(c) had been initiated with respect to the addition/ disallowance of Rs.1,33,35,818/- being the amount of bad debt written off. Your honor will kindly appreciated that the claim for deduction of bad debt written off which came to be disallowed by the AO, per se

does not constitute the default of furnishing inaccurate particulars of income. Therefore, penal provisions of Section 271(1)(c) is not applicable on the facts of the assessee's case. Kindly note that the assessee has written off an amount of Rs.1,33,35,818/-, being the advances given for the purpose of furtherance of its business. The amount in question is allowable as deduction u/s.36(1)(vii) as bad debt written off in view of the ratio of the judgment of the Supreme Court in the case of Patnaik & Co. Ltd. Reported in 161 ITR 365. Therefore, a claim for deduction u/s. 36(1)(vii) in respect of advances written off which was made on the basis of ratio of judgment of Supreme Court is, a bonafide genuine claim. Disallowance of such a claim does not attract penalty u/s. 271(1)(c). It is further stated that the Explanation-1, below Section 271(1) (c) is also not applicable to the facts of the case. During the course of assessment proceedings, the appellant had furnished complete details with respect to the amount written off and also justification for such claim. The explanation furnished by the assessee with respect to the claim of deduction was not found to be wrong by the AO. There is no failure on the part of the assessee to offer an explanation or substantiate and prove the explanation. The addition came to be made only due to difference of opinion I the mind of the AO and that of the assessee with respect to the treatment of the amount written off. Therefore the appellant says that initiation of penalty proceedings u/s.271 (1)(c) is totally unwarranted by facts and unjustified in law. The proceedings may therefore please be dropped.

In this context, reliance is placed on the Supreme Court judgment in the case of CIT v/s. Reliance Petro Products Pvt. Ltd. reported in (2010) 322 ITR 158 (SC). In the judgment in that case, the Hon'ble Supreme Court has held as under:

> *"Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty u/s.271(1)(c). If, we accept the contention of the revenue, then, in case of every return where the claim made is not accepted by the AO for any reason, the assessee will invite*

penalty u/s.271(1)(c). That is clearly not intendment of the legislature."

Reliance is also placed on the judgment of the Karnataka High Court in the case of CIT v/s. SLN Traders reported in (2011) 60 DTR (Kar.) 44. This judgment was delivered on 13th July, 2011. In this case, the Hon'ble Karnataka High Court has held that no penalty u/s.271 (1) (c) with respect to addition made u/s.68 of the IT Act.

Without prejudice to the above, it is further submitted that the predecessor AO has already passed an order u/s. 271(1)(c) of the IT Act on 7/2/2007 for very same assessment year with respect to the addition of Rs.1,33,35,818/-. As per the order u/s. 271(1)(c) dated 7/2/2007 for A.Y. 2003-04 passed by the ITO, Ward 8(3), Ahmedabad penalty of Rs.47,18,757/- was imposed with respect to the disallowance/addition of Rs.1,33,35.818/-. The said penalty was deleted by the CIT (A)-XIV, Ahmedabad vide appellate order No. CIT (A)-XIV/Wd.8 (3)/293/2006-07 dated 21/8/2007. The copy of appeal effect thereof is submitted herewith as per Annexure-1 for the kind perusal of your goodself.

Thus, the order u/s.271 (1)(c) originally passed by the AO i.e. ITO, Ward 8(3), Ahmedabad imposing penalty of Rs.47,18,757/- with respect to the addition of Rs.1,33,35,818/-is already passed.

Your honour will appreciate that as the penalty proceedings u/s.271(1)(c) with respect to ne addition of Rs.1,33,35,818/- has already been concluded by the ITO, Ward 8(3) Ahmedabad on 7/2/2011, initiation of penalty proceedings once again u/s.271(1)(c) vide noted dated 26/8/2011 in respect of the very same addition is illegal. It is therefore requested to kindly drop the penalty proceedings".

7. The submission of the assessee has been perused but after careful consideration of the reply of the assessee, the same is not found acceptable. First of all, the contention of the assessee that the penalty order u/s. 271(1)(c) of the Act was already passed by the AO for the very

same assessment year with respect to the addition of Rs. 1,33,25,818/- is not fully correct. It is clarified that the penalty order of A.O. dated 07/02/2007 was deleted by the ld. CIT(A) and the department filed the appeal against the said order of ld. CIT(A) before the Hon'ble ITAT. The Hon'ble ITAT vide its order dated 18/02/2010 in ITA No.3879/Ahd/2007 set aside the order of Id. CIT (A) deleting the penalty and restored the matter to the Id. CIT (A) with the direction that "he will re-decide the levy of penalty in respect of disallowance of capital expenditure written off amounting to Rs. 1,33,35,818/- after providing opportunities of being heard to the assessee." Further, the Id. CIT (A) vide his order in appeal No. CIT(A) XIV/Wd.8 (3)/293/06-07 dated 27/03/2012 has held as under:

> "I have carefully considered the penalty order and the submission made by the appellant during the course of appellate proceedings. It is seen that the issue related to disallowance of capital expenditure written off amounting to Rs.1,33 35,818/- has been set aside by the ITAT to the file of the A.O. for fresh adjudication vide its order dated 21/05/2007 in ITA No. 1980/Ahd/2006. Since the issue of addition on which the penalty was imposed has been set aside to the file of the A.O. there is no question of imposing penalty on that amount. The penalty imposed by the A.O. is accordingly directed to be deleted. The A.O. may, however, reinitiate the penalty after completing the assessment order and take further action as deemed fit by him."

8. Thus, the penalty proceedings have rightly been initiated by the A.O. and the contention of the A.O. in this regard is untrue.

9. Secondly, the assessee did not produce the details and the evidences even after the specific direction of the Hon'ble ITAT for verification and examination of the fact as to whether the advances were given for setting off of new projects or were given to boost up the existing business of the assessee. So the issue could not be examined in the light of the decision of Hon'ble Supreme Court in the case of Patnaik & Co. Ltd. Vs. CIT as directed by the Hon'ble ITAT because of the non co-operation of the assessee. Further, the other case laws relied upon by the assessee has no direct relevancy with the facts of the case and in view of the fact that the assessee failed to produce the evidences in support of its contention that the advances were given to boost up the existing business of the assessee.

10. It is pertinent to mention here that the auditor has quantified clearly in column No. 17 (a) of Audit Report in Form No. 3CD as under:

> ***17. Amounts debited to profit & loss account being:***
>
> ***(a) <u>Expenditure of capital nature</u>****: Loans & Advances written off (out off Total amount written off of Rs.1,34,82,163/- loans of Rs. 1,46,345/- given to employees of the company have not been considered on capital account).*

11. From the perusal of the audit report, it is clear that the CA has specifically disclosed the fact that the expenditure of Rs. 1,33,35,818/- was to be considered by the assessee as expenditure of capital nature. Thus, the assessee was duty bound to add back the expenditure of capital nature of Rs.1,33,35,818/- in the computation of income. Instead of

following the auditor's remark, the assessee company willfully and deliberately furnished inaccurate particulars to avoid payment of tax.

12. Finally, it is relevant to mention that **the assessee** has cited judgment in the case of CIT V/s. Reliance Petro product Pvt. Ltd. in this regard, it is pertinent to note that the observation of Hon'ble Supreme Court in the case of CIT, Ahmedabad vs. Reliance Petroproduct (P) Ltd. (322 ITR 158) is as under:

> *".....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....."*
>
> Further, the Hon'ble Court has noted:
>
> *"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."*

13. Further, the assessee has also placed reliance on the judgment of Karnataka High Court in the case of CIT Vs. SNL Traders. In this regard, it is relevant to mention that the case law has no direct relevancy with the facts of the case of the assessee. The case law is of very general in nature and has no specific bearings with the facts of the assessee's case. In this connection, it may be mentioned that the term "inaccurate particulars" has not been defined in the Act. As per law lexicon, the meaning of the word "particular" is a detail or details; the details of a claim or the

separate items of an account. Similarly, in Webster's Dictionary, the word “inaccurate" has been defined as "not accurate, not exact or correct; not according to truth: erroneous; as an inaccurate statement, copy or transcript". Thus reading the words in conjunction, it means the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous.

14. The Gujarat High Court, which is also the jurisdictional High Court in the case at hand, has noted in the case of A. M. Shah & Co. *v.* CIT [2000] 108 Taxmann 137(Guj.)that:

> *"Any concealment or inaccuracy in the particulars of income in the return occurring at any stage upto and inclusive of the ultimate stage of working out of total income would attract the penalty provision of section 271(1)(c). Every figure in the return which is set opposite to the item of income is a particular income, whether the figure is one which is stated independently of anything else that appears in the return or the documents accompanying it or whether it is something derived from other figures elsewhere stated in such return or documents. False result may be produced by the falsity of one or more of the constituent items in the return. The word ‘inaccurate particulars' would cover falsity in the final figure as also the constituent elements or items. They simply would mean inaccurate in some specific or definite respect whether in the constituent or subordinate items of income or the end result".*

15. In the said case, Hon'ble Gujarat High Court has, in great detail, dealt with the issues pertaining to Section 271(1) (c). However, for the sake of brevity, only a part of the observation of the Court has been produced here. Vide the above judgment, the Hon'ble has clarified as regards what

could fall within the purview of the term "inaccurate particulars of incomes".

16. It is further noted that the Hon'ble Supreme Court in the case of *Dharmendra Textiles Processors* 306 ITR 277 (2008) (SC) has noted that the explanations appended to sec. 271(1)(c) entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. It is also held that the section has been enacted to provide for a remedy for loss of revenue and that willful concealment is not an essential ingredient for attracting civil liability as u/s. 271(1)(c) of the I. T. Act.

17. In view of the decisions discussed above, it clearly emerges that in case any where any particular filed in the return of income by the assessee is found to be inaccurate, erroneous or false and **which has an impact on total income returned by the assessee. it would attract liability for penalty u/s. 271(1)(c) for furnishing inaccurate particulars of income.** Moreover, after the decision of Hon'ble Supreme Court in the case of *Dharamendra Textiles Processors* (discussed above), penalty u/s. 271(1)(c) is a 'civil liability' and 'mens-rea' need not be proved for the levy of penalty. Mere, establishing of inaccuracy in particulars of income would be adequate for attracting the 'civil liability' of penalty u/s. 271 (1)(c) of the I. T. Act.

18. Further (191 TAXMAN 179) HON'BLE HIGH **COURT OF DELHI in Commissioner of Income-tax vs. Zoom Communication (P.) Ltd.(2010) stated that:**

> *"It is true that mere submitting a claim which is incorrect, in law, would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect, in law, is mala fide the Explanation 1 to section 271(1) would come into play and work to the disadvantage of the assessee." [Para 19]*

19. It is clear that any concealment or inaccuracy in the particulars of income in the return occurring at any stage up-to and inclusive of the ultimate stage of working out of total income would attract the penalty provision of section 271(1)(c).

20. In view of the above facts Learned ACIT was satisfied that the assessee has furnished inaccurate particulars of its income and liable for penalty u/s.271(1) (c) of the IT. Act. Therefore, levy a minimum penalty @100% of the amount of tax sought to be evaded on account of filing of inaccurate particulars of income, which works out to Rs.46,67,536/-, against the maximum penalty of Rs.1,40,02,608/-on the assessee.

21. Against the said order assessee preferred first statutory appeal before the learned CIT(A), learned CIT(A) held that He has inclined with the contention of appellant that all the possible details and facts related to

issue disclosed by the appellant and also submitted during the proceedings. It is the claim of appellant though capital in nature as notified by the tax auditor but the same was allowable as business loss as per the ratio of Hon'ble Supreme Court decision in the case of Patnaik & Co. Ltd.(supra). The AO after rejection of appellant's explanation which was not a false explanation invoked the penalty provisions without appreciating the facts and legal propositions. He has inclined that ratio of Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. (supra) squarely applicable in the case of appellant. The appellant company is a sick company and the returned loss of Rs.1,42,91,510/- after such assessment at loss of Rs.9,56,913/- has not given any kind of advantage to appellant since all such losses carried forward got lapsed and therefore, there cannot be any intention by the appellant for evasion of tax. He was also inclined with the appellant that facts and ratio of case relied on by AO in penalty order are distinguishable and not applicable in the case of appellant in view of subsequent decisions (considering the said decision) as relied on by appellant.

22. Finally, AO directed to delete the penalty so imposed.

23. We have gone through the relevant record and impugned order, in our considered opinion, order of the CIT(A) does not require any kind of

interference. In the result, we uphold the order of the CIT(A). In the result, appeal of the Department is dismissed.

24. In the result, appeal filed by the Department is dismissed.

This Order pronounced in Open Court on	**21/04/2017**

Sd/-	Sd/-
(प्रदीप कुमार केडिया)	**(महावीर प्रसाद)**
लेखा सदस्य	**न्यायिक सदस्य**
(PRADIP KUMAR KEDIA)	(MAHAVIR PRASAD)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 21/04/2017

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XIV, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

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