

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1912/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Kumudini V. Gavit,
6, Viral Vihar Khodai Mata
Mandir Road, Nandurbar,
Pin-425 412.
PAN : AIJPG4422F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-4, Dhule.

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri Maruti W. Maddewad.

सुनवाई की तारीख / Date of Hearing : 02.07.2020

घोषणा की तारीख / Date of Pronouncement : 06.07.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeal)-1, Nashik dated 15.05.2017 for the assessment year 2013-14
as per the following grounds of appeal on record:

*"1. The learned CIT(A) erred In confirming the penalty u/s. 271(1)(c) of
Rs.4,95,410/-.*

2. *The penalty order be held bad in law as the penalty is levied for furnishing inaccurate particulars of income while the asst. order / penalty notice mentioned that the penalty proceedings were initiated for concealment of income as well as furnishing inaccurate particulars of income.*

2.1. *The appellant submits that as the notice u/s. 274 is not specific and invalid, the penalty order u/s.271(1)(c) is bad in law.*

3. *The learned CIT(A) was not justified in confirming the penalty on the following additions made by the A.O. in the asst.-*

- a. Disallowance of repairs and collection charges- Rs.16,472/-*
- b. Disallowance of depreciation on tourist buses – Rs.15,80,329/-*
- c. Disallowance of interest on housing loan-Rs.6480/-*

4. *The learned CIT(A) failed to appreciate that the levy of penalty is not justified for the following reasons –*

- a. The claim of depreciation of 50% on tourist buses was wrongly adopted by the appellant as it was due to the inadvertent mistake committed by the Auditor in the audit report for A.Y.2013-14 and hence, it was not concealment but a bona fide mistake.*
- b. The claim of repairs and collection charges and also the interest on housing loan were inadvertent mistakes on the part of the appellant and on which the levy of penalty is not justified.*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2. Though the assessee has raised multiple grounds of appeal, the crux of the grievance of the assessee is with regard to penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the Assessing Officer and confirmed by the Ld. CIT(Appeal).

3. At the time of hearing through video conference, neither the assessee nor his Authorized Representative was present. We proceed to hear the appeal after recording submissions of the Ld. DR on record.

4. The brief facts of the case are that the assessee is an individual and is engaged in the proprietor business of running petrol and diesel pump of

Bharat Petroleum Corporation Ltd. under the name and style of M/s. Sudarshan Petroleum at Nandurbar. The assessee had e-filed her return of income on 14.11.2013 declaring total income of Rs.7,88,739/- and agricultural income of Rs.7,85,846/-. During the assessment proceedings, the Assessing Officer made following additions:

Sr. No.	Particulars	Additions (Rs.)
1	Non-substantiation of repair and collection charges at rented plot of Ravimohan Park, Nandurbar.	Rs.16,472/-
a. 2	Excess depreciation claimed on tourist buses	Rs.15,80,329/-
3	Wrong deduction claimed on account of payment of housing loan interest of under construction house property at Nashik	Rs.6,480/-
	Total	Rs.16,03,281/-

The Assessing Officer made total addition of Rs.16,03,281/- and initiated penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee accepted the addition and did not file appeal. The Assessing Officer held that if the case not been selected for scrutiny the income of Rs.16,03,281/- would have escaped taxation. The Assessing Officer, therefore, levied penalty of Rs.4,95,410/- u/s.271(1)(c) of the Act on addition of Rs.16,03,281/-.

5. During the First Appellate Proceedings, the Ld. CIT(Appeal) confirmed the penalty imposed by the Assessing Officer and, hence, the assessee is in appeal before us.

6. We have perused the case records and heard the submissions of Ld. DR. In this case, the assessee has incurred expenditure under the heads **a.**

Repair and collection charges **b.** Expenditure on tourist buses and **c.** Interest on housing loan. The Revenue has not questioned regarding the genuineness of these expenditures. Even at the time of hearing, the Ld. DR could not produce any evidence suggesting that the assessee has not incurred these expenses. Therefore, these expenses are genuine. However, the grievance of the Revenue is that the assessee while calculating these expenses inappropriately calculated them (as per table in Page-3 of this order) and for this reason, penalty u/s.271(1)(c) of the Act was levied.

7. As per record, we observe that all the facts were disclosed and the claim was made for deduction on expenditures incurred by the assessee. As per record the assessee has made a bona-fide claim. The Assessing Officer as well as CIT(A) have not challenged the genuineness / bona-fides of the expenditures so incurred. The claim of the assessee is also supported by various decisions and documentary evidences placed on the record. Thus, penalty cannot be levied where a bona-fide claim of the assessee was rejected by the tax department. We observe that the instant case of the assessee is akin to the decision of the Hon'ble Supreme Court in the case of **Price Waterhouse Coopers (P) Ltd vs. CIT [2012] 348 ITR 306 SC**. In that case, the crux of the issue for consideration was whether there was a bona fide and inadvertent error on the part of the assessee, warranting no imposition of penalty u/s 271(1)(c) of the Act. According to the Hon'ble Apex Court, although undoubtedly the assessee is a reputed firm and has great expertise available with it, despite this it is possible that even the assessee could make a silly mistake. The relevant portion of the observation/finding of the Hon'ble Supreme Court is as under:

"The contents of the Tax Audit Report suggest that there is no question of the Assessee concealing its income. There is also no question of the Assessee furnishing any inaccurate particulars. It appears to us that all that has

*happened in the present case is that through a bona fide and inadvertent error, the Assessee while submitting its return, failed to add the provision for gratuity to its total income. **This can only be described as a human error which we are all prone to make. The calibre and expertise of the Assessee has little or nothing to do with the inadvertent error. That the Assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the Assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.***

Given the peculiar facts of this case, that the imposition of penalty on the Assessee is not justified. We are satisfied that the Assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. "

8. The Hon'ble Jurisdictional High Court in the case of **CIT vs. Somany Evergree Knits Ltd. (2013) 352 ITR 592** on the issue of imposing penalty u/s.271(1) (c) of the Act has held as under:

*"Penalty u/s 271(1) (c) --Furnishing of inaccurate particulars --Bona fide mistake - Assessee sold its garment manufacturing machine, forming part of block of assets & claimed loss thereon as revenue expenditure--In assessment proceedings Ms. Archana Shantilal Jain assessee realized its mistake & withdrew loss from P&L account--Further, assessee had also claimed excess depreciation--This happened due to mistake in calculation i.e. instead of reducing amount of depreciation on asset sold, from total depreciation, such amount was added resulting in excess claim--AO did not accept both mistakes & levied penalty--CIT (A) upheld order --**Held, bonafide and inadvertent mistake of a CA while filing a return of income will not amount to furnishing of inaccurate particulars of income**--As far as loss on sale of machineries was concerned, P&L Account filed by assessee along with return clearly described loss as loss on sale of garment unit assets--It was this loss which was added to net loss as per P&L Account in computation of total income-- Chartered Accountant of assessee did not advise assessee as to correct legal position & return was filed on above lines--When this was pointed out in course of assessment proceedings assessee accepted addition made by AO-- It was held that fixed assets of garment division clearly showed that assets sold were depreciable assets, thus there was enough evidence available in documents filed along with return to show that claim made by assessee were not in accordance with law--Thus, plea of assessee that claim for deduction was made on account of a bonafide mistake had to be accepted--It was held that when all facts were available on record it cannot be said that assessee attempted to furnish inaccurate particulars of income particulars--With regard to excess depreciation, it was held that it was clearly a mistake on part of CA of Assessee-- When assets comprised in block of assets were sold sale value of assets sold had to be reduced from block of assets and no other adjustment was required--In contrary, assessee worked out excess depreciation on assets of garment unit sold during PY--It was clearly a case of incorrect claim--It was held that bonafide act of assessee was established from facts that assessee accepted mistake and did not prefer any appeal against order of AO-- Non-furnishing of revised return did not mean that bonafide mistake in making a*

wrong claim should be visited with imposition of penalty--Moreover, time for filing a revised return had already been expired--Penalty imposed cancelled."

Respectfully, following the directions and rule of the Hon'ble Apex Court and Hon'ble Jurisdictional High Court, we are of the opinion that it is not a fit case for levy of penalty u/s.271(1)(c) of the Act. Hence, we set aside the order of the Ld. CIT(Appeal) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

9. In the result, **appeal of the assessee is allowed.**

Order pronounced on 06th day of July, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th July, 2020.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	02.07.2020	Sr.PS/PS
2	Draft placed before author	02.07.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		