

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.878/Bang/2019
Assessment Year: 2011-12

M/s. Vanshee Builders & Developers Private Limited No.684, 9 <sup>th</sup> 'A' Main, I stage Indiranagar Bengaluru-560 038  <b>PAN NO : AABCV3394G</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle -12 (5) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri S.V. Ravishankar, A.R.
<b>Respondent by</b>	:	Shri D.S. Sundar Rajan, D.R.

Date of Hearing	:	20.10.2020
Date of Pronouncement	:	21.10.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 18.3.2019 passed by Ld. CIT(A)-7, Bengaluru confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 ['the Act' for short] by the Assessing Officer for the A.Y. 2011-12.

2. Facts relating to the case are discussed in brief. The assessee is engaged in the business of property development. It filed its return of income for the year under consideration on 30.9.2011 declaring total income of Rs.39,94,510/- under normal provisions of Act and

declared book profit of Rs.8,49,857/- u/s 115JB of the Act. In the scrutiny proceedings, the A.O. determined the total income of the Assessee at Rs.95,61,903/- by making certain additions. The A.O. noticed that the assessee has furnished audit report in form No.29B in respect of book profit computed u/s 115JB of the Act. The auditor had determined the book profit at Rs.1,52,18,852/-. As noticed earlier the assessee had declared book profit of Rs.8,49,857/- in the return of income. Accordingly, the A.O. computed the book profit at Rs.1,52,18,852/- as reported in audit report. Since the book profit was more than the amount of total income computed under normal provisions of the Act, the assessing officer adopted the book profit as total income of the assessee. Since the assessee had declared book profit at lesser figure, the A.O. mentioned in the assessment order that he is initiating penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Thereafter he issued a notice u/s 271(1)(c) of the Act wherein he did not strike down inapplicable portion.

3. In the penalty proceedings, the assessee submitted that the mistake was committed inadvertently while preparing return of income. It was also submitted that the addition has been made only in the book profit computed u/s 115JB of the Act and hence there is no loss of revenue. The A.O. did not accept the explanations given by the assessee. He took the view that the assessee has intentionally concealed income/furnished inaccurate particulars of income. The A.O. also expressed the view that the assessee had the benefit of audit report obtained in form No.29B of the Act while filing return of income. He noticed that the audit report was obtained on 3.9.2011 and the return of income was filed on 30.9.2011. Accordingly, he took the view that it cannot be a case of mere omission to offer income. He also expressed the view that this suppression of income has arisen on account of selection of the case on scrutiny.

Accordingly, the A.O. held that the penalty is leviable u/s 271(1)(c) of the Act. Accordingly, levied minimum penalty of Rs.28,63,812/- u/s 271(1)(c) of the Act.

4. The Ld. A.R. initially advanced his arguments on various legal grounds. On merits, the Ld. A.R. submitted that the profit before tax declared by the assessee in the profit & loss account placed at page 52 of the paper book was Rs.1,52,18,851/-. The above said figure included rental receipt of Rs.3,44,64,027/- and corresponding expenses. In the return of income, the profit and loss account figures are required to be entered at “Part A – P & L”. In this part, the data/details of profit and loss account are required to be entered as it is. The computation of income under the head income from house property is required to be filled in at “Schedule HP” and the computation of income under the head income from business is required to be filled in at “Schedule BP”. The bifurcation of profit and loss account figures into various heads of income is required to be carried out in the above said schedules.

5. The Ld A.R submitted that the person who filled the return of income has erroneously filled up the details relating to “income from business” in the Profit and Loss account at “Part A – P & L”. Hence the “profit before tax” amount was erroneously reported at Rs.8,49,857/- at item 43 in “Part A – P&L”, instead of the correct amount of Rs.1,52,18,851/-.

6. The Ld A.R further submitted that the computation of book profit u/s 115JB is to be reported in “Schedule MAT”. The software automatically adopts the “Profit before tax” amount shown in “item 43 in “Part-A – P&L”. Accordingly, the software also adopted the figure of Rs.8,49,857/- as net profit figure and accordingly, the book profit was also arrived at the same figure.

7. The Ld A.R submitted that the return of income was filed on 30-09-2011. As per the provisions of sec.115JB, the assessee has also obtained an audit report in Form No.29B on 03-09-2011 itself. The auditor has correctly reported the book profit figure at Rs.1,52,18,852/-. The audited Profit and Loss account also discloses the very same figure. Accordingly, the Ld A.R submitted that the assessee has correctly disclosed the book profit amount in all other documents. There was under reporting of book profit in the return of income and it has occurred due to erroneous filling of the return of income. Accordingly, he submitted that the mistake or error represents bonafide mistake and it has happened inadvertently. The Ld A.R placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Price Waterhouse coopers P Ltd vs. CIT (2012)(348 ITR 306) and submitted that the penalty should not be levied for erroneous clerical mistakes.

8. The Ld D.R, on the contrary, submitted that the assessee has obtained audit report in Form no.29B on 03-09-2011 itself and the auditor has computed the book profit u/s 115JB of the Act at Rs.1,52,18,852/-. However, in the return of income filed on 30-09-2011, the book profit figure was reported at Rs.8,49,857/- despite the availability of the audit report. The assessee did not take effort to rectify the so-called mistake also. The fact of under reporting has surfaced only because the return of income was taken up for scrutiny. Accordingly, he submitted that there was deliberate attempt to under report the book profit, which constituted the total income of the assessee. Accordingly, he submitted that the penalty was rightly confirmed by Ld CIT(A). With regard to the various legal contentions, the Ld D.R placed his reliance on the decision rendered by Ld CIT(A), who had rejected all the legal contentions by a speaking order.

9. We heard rival contentions and perused the record. We notice that the assessee is a private limited company and accordingly, its accounts were audited under Companies Act. The audited profit and loss account disclosed net profit before tax at Rs.1,52,18,851/-. The audit report obtained in Form no.29B u/s 115JB of the Act also discloses the net profit at Rs.1,52,18,851/- and the book profit also arrived at the very same figure. The assessee has furnished a copy of return of income, which is filled up by using software. It is known to everyone that the return of income is uploaded electronically by using software. If the data/details are entered correctly, then the features of software picks up the relevant data from the details and accordingly fill up various schedules.

10. In the return of income, in “Part A-P&L” , the data relating to Profit and Loss account are required to be filled in. A perusal of the details filled therein would show that the assessee has filled in business income details therein, instead of filling up the details of Profit and Loss account. This mistake had the cascading effect and the software has picked up the erroneous figures for computing book profit u/s 115JB of the Act in “Schedule MAT”. It is the submission of the assessee that the book profit computation escaped the attention, since the tax was paid as per normal computation of total income. During the course of assessment proceedings only, the mistake was realised because the book profit turned out to be more than the total income computed under normal provisions of the Act. Accordingly, it was submitted that the mistake has occurred due to erroneous feeding of data while filling up return of income.

11. We find merits in the submission of the assessee. From the foregoing discussions, it can be noticed that incorrect computation of book profit has happened due to erroneous filling up of data in the return of income. In our view, the same is a bona fide and

inadvertent error. In the case of Price waterhouse coopers P Ltd (supra), the Hon'ble Supreme Court considered the validity of penalty levied on bona fide mistakes and it was held as under:-

*“17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and, indeed this has been acknowledged both by the Tribunal as well as by the High Court*

*18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.*

*19. 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 assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*

*20. We are of the opinion, 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.”*

In our view, the decision of Hon'ble Supreme Court would come to the help of the assessee in the facts and circumstances of the case. Accordingly, we hold that the imposition of penalty on the assessee is not justified.

12. The assessee has raised many legal contentions before us. Since we have deleted penalty on merits, we do not find it necessary to address those legal contentions.

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13. In view of the foregoing discussions, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty levied u/s 271(1)(c) of the Act for the year under consideration.

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

Order pronounced in the open court on 21<sup>st</sup> Oct, 2020

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 21<sup>st</sup> Oct, 2020.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.