

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1270/Del/2017 : Asstt. Year : 2010-11

ACIT, Circle-12(1), New Delhi	Vs	IKEA Trading (India) Pvt. Ltd., DLF Infinity Tower-A, 8 th Floor, DLF Cybercity, Sector-25, Gurgaon-122001
(APPELLANT)		(RESPONDENT)
PAN No. AAACH1483Q		

**Assessee by : Sh. Ravi Sharma, Adv. &
Sh. Rishabh Malhotra, Adv.**

Revenue by : Sh. Ved Prakash Mishra, Sr. DR

Date of Hearing: 13.01.2021

Date of Pronouncement: 05.03.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT(A)-19, New Delhi dated 16.12.2016.

2. Following grounds have been raised by the revenue:

"1. On the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the penalty u/s 271(1)(c) of the IT Act, relevant to assessment year 2010-11."

3. Ikea Trading (India) Private Limited is an Indian company incorporated in India on 13th June 1994. The assessee, a Merchant Exporter, granted a 'Four Star' export house status by the Government of India, is engaged in the trading of home furnishing products. The assessee purchases different home

furnishing products like carpets, textile and metal etc. from various supporting manufacturers in India and exports the same outside India.

4. The assessment in this case was made at a loss of Rs.9,87,972/- against returned loss of Rs.7,82,35,830/-. The additions were made on account of transfer pricing adjustment in respect of sale of fixed assets amounting to Rs.6,17,03,289/- and disallowance on account of expenses amounting to Rs.1,55,44,569/-. The penalty proceedings were initiated during the course of assessment and penalty of Rs.2,62,56,547/- was imposed vide order dated 29.10.2014 on the issue of adjustment on account of ALP of fixed assets and on the issue of disallowance of expenses.

a) Penalty on the issue of adjustment on account of ALP of fixed assets:

5. The assessee has undertaken the following international transactions during the financial year:

<i>International Transaction</i>	<i>Value (Rs.)</i>	<i>Method used</i>
<i>Sale of fixed assets</i>	<i>63,680,884</i>	<i>CUP</i>
<i>Transfer of current assets</i>	<i>12,406,737</i>	<i>CUP</i>
<i>Sale Return by AEs</i>	<i>38,338,043</i>	<i>-</i>
<i>Reimbursement of rework and other expenses</i>	<i>42,419,195</i>	<i>-</i>

6. For arriving at the ALP of the international transaction pertaining to transfer of fixed assets to AEs, the assessee had relied upon valuation report of an external valuer, who had valued these assets at Rs.57,501,821/-. The sale proceeds received from the AE were much higher at Rs.63,680,884/- than the valuation made of Rs.57,501,821/-.

7. During the assessment proceedings, the TPO disregarded the valuation report of an external valuer relied upon by the assessee and instead, used Written Down Value ("WDV") of such assets for determining the arm's length price. The TPO held that the ALP of the fixed assets sold should be taken as per the closing WDV of fixed assets computed under the Act, which was Rs.119,205,110/- and not as per the valuation report carried out by external valuer. After taking into consideration, WDV of the assets and value of the assets as per the valuation certificate, the AO determined that the shortfall as per ALP of Rs.61,703,289/- on adjustment of the ALP.

8. Heard the arguments of both the parties and perused the material available on record.

9. We find that the assessee has sold assets at the WDV of the assets as per company law whereas the TPO held that the assessee ought to have sold the assets at the value of the WDV of the block of assets as per the Income Tax Act. The WDV as per the Income Tax Act may not be /cannot be the fair market value of the assets. The assets were transferred at the book value as per the audited accounts of the assessee which is a recognized method of providing depreciation. Such sale of assets after valuation and the adjustment by the TPO by resorting to CUP method cannot be a ground for levy of penalty u/s 271(1)(c). The case of concealment or furnishing of inaccurate particulars of income cannot attract the provisions of penalty u/s 271(1)(c). Hence, we hold that penalty levied on this ground has been rightly deleted by the Id. CIT (A).

b) Penalty on the issue of disallowance of expenses:

10. The Assessing Officer resorted to disallowance of expenses of Rs.155,44,569/- on the grounds that the claim of the assessee with regard to personnel expenses, operative expenses and finance expenses cannot be accepted as the assessee has not carried out any business activities during the year under consideration.

11. The assessee submitted that the observations of the Assessing Officer were not correct on facts of the case as the assessee has conducted business operations as mentioned in the table below:

S.No.	Transaction Flow	Supporting Documents
1	<i>Goods purchased by Ikea India from the domestic Vendor/ Manufacture (i.e. Manufacturer to Ikea India)</i>	<i>Purchase Invoice from the Vendor in India</i>
2	<i>Ikea India Sells/ exports goods to the Ikea Group entity</i>	<i>Sales Invoice to Ikea Group entity outside India</i>
3	<i>The Group entity sends the defected good to India for repair and re-export</i>	<i>Purchase Invoice from Ikea Group entity (raised only for the purpose of</i>
4	<i>As per the arrangement between Ikea India and the vendor, the vendor collects the defected goods from the ICD Depot (Dadri)</i>	<i>Import of goods and subsequent clearance by the Custom Authorities), Packing list, Bill of Entry for Home consumption</i>
5	<i>Ikea India pays the rework charges to the Vendor as per the invoice from the Vendor</i>	<i>Purchase Invoice from the Vendor in India (It is clearly mentioned on the invoice that the goods were re-imported vide bill of entry for repairs. After doing repairs such goods are re-exported through this invoice).</i>

6	<i>Ikea India re-exports re-worked goods to the Group entity</i>	<i>Sale Invoice to the Group entity, Shipping Bill for export/re-export of duty free goods, Non-negotiable way bill for re-export of goods from India, Exchange control declaration (GR) Form</i>
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12. On going through the above activities it can be held that the assessee is continuing to carry out business activities. The activities undertaken are in connection with terms of contract. It cannot be said that the business ceased to exist just because there was no activity of trading or manufacturing during the given period. The assessee has undertaken the activities of reworking and removing of defects in respect of goods sold earlier and also exported certain goods. The assessee has also filed the statutory returns. The disallowance has been made on the grounds that the business has not been carried out but not on the grounds that the expenses are not related to the business.

13. With regard to the penalty levied on such issue, we find that such disallowance do not fall under the category of furnishing of inaccurate particulars or concealment of such particulars of income.

14. In the background of these facts we have gone through the various judicial pronouncements on this issue.

15. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs Ajaib Singh and Co. (2002) 253 ITR 0630 has held that "disallowance of an expense per se cannot mean that the assessee has furnished incorrect particulars of its income. Concealment involves penal action. It has to be proved as a conscious act. The essential pre-condition for invoking

Explanation 1 to section 271(1)(c) of the Income Tax Act, 1961 is that the assessee "fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) to be false.". It is only in such a situation that the Assessing Officer can invoke the Explanation to Section 271(1)(c) and impose penalty.

16. We also hold that the penalty cannot be sustained in view of the judgment of the Hon'ble Jurisdictional High Court in the case of ACIT Vs Delhi Cloth & General Mills Co. Ltd. 157 ITR 822 wherein it was held that the mere fact that a claim for expenditure stands disallowed does not by itself lead to the inference that the assessee had furnished inaccurate particulars in regard to that item.

17. Further, the Hon'ble Supreme Court in the case of Reliance Petorproducts Pvt. Ltd. 322 ITR 158 (2010) held that "inaccurate" and "particulars" in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c). Mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

18. On going through the entire facts and circumstances of the case, we hereby confirm the order of the Id. CIT (A) which held that it a "mere disallowance" of an expense does not warrant a penalty for filing inaccurate particulars of income u/s 271(1)(c).

19. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 05/03/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 05/03/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR