

आयकर अपीलिय अधिकरण
मुंबई पीठ "इ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER

आअसं. 1667/मुं/2020(नि.व.2015-16)
ITA NO. 1667/MUM/2020 (A.Y.2015-16)

**Sterling Investment Corporation
Pvt Ltd, 41/44, S P Centre, Minoo
Desai Marg, Colaba, Mumbai
PAN: AAACCS5467L** : अपीलार्थी/ **Appellant**

बनाम/ Vs.

Commissioner of Income Tax – Appeals-(8)
Mumbai : प्रत्यर्थी/ **Respondent**

Appellant by : Shri Rajan Vora
Respondent by : Shri Milind Chavan
सुनवाई की तारीख/
Date of Hearing : 20/12/2021
घोषणा की तारीख /
Date of Pronouncement : 17/03/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income-tax (Appeals)-8, Mumbai [hereinafter referred to, as 'the CIT(A)'] dated 13/02/2020 for the assessment year 2015-16, upholding

levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. This appeal is time barred by 86 days. The assessee has filed an application seeking condonation of delay in filing of the appeal. A perusal of the application shows that the assessee received the order of CIT(A) on 13/02/2020. As per the provisions of the Act, the due date for filing of the appeal was 08th April, 2020, whereas, the appeal was filed on 08th June, 2020. The Ld.AR submitted that the delay was caused due to closure of office on account of Covid-19 pandemic. The Ld.AR placed reliance on The Taxation & Other Laws (Relaxation of certain provisions) Ordinance, 2020 whereby the limitation for filing of the appeals was extended. We are satisfied that the delay, if any in filing of the appeal was not deliberate, but was for the reasons beyond the control of assessee. The appeal has been filed within the extended time granted by the Ordinance, aforesaid. Therefore, the appeal has been filed within the extended period of limitation, hence, no delay in filing of appeal.

3. Shri Rajan Vora, appearing on behalf of the assessee submitted that the assessing officer has levied penalty under section 271(1)(c) of the Act in respect of assessee's inadvertent claim of expenditure under 'Corporate Social Responsibility' (in short, 'CSR'). The Ld.AR submitted that assessment year 2015-16 was the first year for disallowing expenditure under CSR. The assessee, inadvertently, claimed CSR expenditure. During assessment proceedings, the assessee suo motu revised the computation of income and disallowed the expenditure. The Ld.AR referred to the revised computation at pages 75 to 80 of the paper book.

3.1 The Ld.AR further pointed that the case of assessee was selected for limited scrutiny on the following points:-

- (1) Low income and high loans / advances / investments; and
- (2) Investments in unlisted equities.

No enquiry was made by the assessing officer with respect to CSR expenditure. The assessee, on realising its mistake, revised the computation of income and suo motu disallowed expenditure of Rs.58,16,000/- against CSR. The error in claiming expenditure under CSR was purely bonafide. The assessee never carried forward the losses to the subsequent assessment years. The Ld.AR contended that where the mistake is bonafide, no penalty should be levied. In support of his contention, the Ld.AR interalia placed reliance on the following decisions:-

1. Price Waterhouse Coopers Pvt Ltd vs CIT – 348 ITR 306 (SC)
2. CIT vs Somany Evergree Knits Ltd – 252 ITR 92 (Bom)
3. CIT vs Reliance Petroproducts Pvt Ltd, 322 ITR 158 (SC)
4. On the other hand, Shri Milind Chavan representing the department, vehemently defended the impugned order. The Ld.DR submitted that it is not a case of limited scrutiny. The expenditure in respect of CSR was claimed by the assessee in order to reduce tax incidence. The Ld.DR submitted that the case laws cited by the AR of assessee are distinguishable and referred to the decisions on which the CIT(A) has placed reliance to uphold levy of penalty under section 271(1)(c) of the Act.
5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on

which reliance has been placed by respective sides to support their contentions. Undisputedly, the assessee had claimed expenditure on CSR under section 37(1) of the Act in the original computation of total income. During assessment proceedings, the assessee voluntarily filed revised computation disallowing the said expenditure. The contention of the assessee is that the expenditure was claimed inadvertently. Explanation 2 to section 37 was introduced by the Finance (No.2) Act, 2014 with effect from 01/04/2015. The newly inserted Explanation disallows the expenditure incurred on the activities relating to CSR referred to in section 135 of the Companies Act, 2013. The assessment year under appeal being the first year wherein this amendment had taken effect, the assessee ostensibly made a claim of CSR expenditure due to oversight. After having examined the facts and chronology of events, prima facie it appears to be a bonafide mistake. It is relevant to mention here that the assessee had made disclosure about the claim made in the computation of income including the expenditure claimed on CSR. Thus, the assessee has not suppressed the facts. The assessee in computation of income made a claim which was inadmissible and during assessment proceedings the assessee rectified the mistake by filing revised computation. As is evident from notice dated 4/9/2017 issued under section 142(1) of the Act (at page 74 of the paper book), the assessing officer had made enquiries only on two issues i.e. (i) low income & high loans / advances / investments, and (ii) investment in unlisted equities. Apparently, the mistake in claiming CSR expenditure was not pointed by the AO.

6. The Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt Ltd (supra) has held that merely because the assessee had claimed

expenditure which was not accepted or was not acceptable to revenue, that by itself, would not attract penalty under section 271(1)(c) of the Act. The relevant extract of the judgment rendered by the Hon'ble Apex Court in the aforesaid case reads as under:-

"9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. 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."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words 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. We must hasten to add here that 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) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income

in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. 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 under section 271(l)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.”

(Emphasis by us)

7. The Hon’ble Apex Court in the case of Price Waterhouse Coopers Pvt Ltd vs CST (supra) has held that no penalty under section 271(1)(c) of the Act could be imposed where there was bona fide and inadvertent error. Similar view has been taken by Hon’ble jurisdictional High Court in the case of CIT vs Somany Evergree Knits Ltd (supra).

8. Thus, in the light of facts of the case and decisions discussed above, we are of the considered view that this is not a fit case for levy of penalty under section 271(1)(c) of the Act. Consequently, the assessing officer is directed to delete the penalty.

9. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Thursday the 17th day of March, 2022.

Sd/-

(PRASHANT MAHARSHI)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 17/03/2022

Pavanan

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai