

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.19/Kol/2023
Assessment Year: 2014-15**

Height Insurance Services Limited S. B. Mansion, 16, R. N. Mukherjee Road, Kolkata-700001. (PAN: AACCH0943G)	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Somnath Ghosh, Advocate & Shri P. J.
Bhide, AR

Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 09.10.2023

Date of Pronouncement : 28.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/PNL/F/271(1)(c)/2021-22/1038386239(1) passed against penalty order u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 04.01.2022 for AY 2014-15.

2. In the present appeal assessee has challenged the imposition of penalty of Rs.94,17,382/- u/s. 271(1)(c) of the Act.

3. Brief facts of the case are that assessee filed its return of income for the AY 2014-15 u/s. 139(1) of the Act on 18.09.2014, reporting total income of Rs. Nil, after set off of brought forward loss of

Rs.1,00,92,344/-. The return of income was selected for scrutiny through CASS. The assessment was completed u/s. 143(3) of the Act by the Ld. Income Tax Officer, Ward - 2(3), Kolkata vide Assessment Order dated 26.12.2016 in the following manner:

- (a) Total additions made with the returned income:
Rs.2,70,033/-;
- (b) Total income assessed after set off of brought forward loss of Rs.1,03,62,377/-: Rs. NIL;
- (c) Loss allowed to be carried forward for future Set off:
Rs.7,83,44,836/-.

3.1. Afterwards, the case of the assessee was reopened by issuance of notice under section 148 of the Act. The assessee company filed its return of income in response to notice u/s. 148 of the Act for the AY 2014-15 on 01.05.2020 declaring a total income of Rs.66,87,770/-. The assessment was completed under Section 147 read with Section 144B of the Act vide assessment order dated 27.09.2021 in the following manner:

- (a) Total additions made with the Returned Income: Rs. Nil;
- (b) Total Income assessed: Rs. 66, 87,768/-;
- (c) Carry forward of loss disallowed: Rs.2,90,25,681/-
- (d) Loss allowed to be carried forward for future set off :
Rs.4,95,89,188/-.

3.2. Status of carry forward and set off of business losses as per return of income and assessed income of the assessee are as follows:

Assessment Year	Returned Income/(Loss) Before Set Off of Carried Forward Loss (Rs.)	(Loss) Carried Forward After Set Off as Per Return of Income (Rs.)	Assessed Income/(Loss) Before Set Off of Carried Forward Loss (Rs.)	(Loss) to be Carried forward After Set Off as Per Assessment Order (Rs.)
2010-2011	(31,37,77,840)	(31,37,77,840)	(28,63,06,634)	(28,63,06,634)
2011-2012	9,74,74,684	(21,63,03,156)	9,75,22,904	(18,87,83,790)
2012-2013	6,13,51,321	(15,49,51,835)	6,25,87,543	(12,51,96,187)
2013-2014	6,62,44,622	(8,87,07,213)	6,62,44,622	(5,99,51,565)
2014-2015	1,00,92,344	(7,86,14,869)	1,03,62,377	(4,95,89,188)
2015-2016	1,34,64,710	(6,51,50,159)	1,34,64,710	(3,61,24,478)
2016-2017	80,27,021	(5,71,23,138)	80,27,021	(2,80,97,457)
2017-2018	2,60,95,018	(3,10,28,120)	2,60,95,018	(20,02,439)

3.3. From the above Table, it can be discerned that the difference between loss carried forward after set off as per return of income and loss to be carried forward after set off as per assessment order arises from the AY 2010-2011. This difference between carried forward loss as per return of income and assessment order is mainly attributable to disallowances of entire expenses on Salary, Bonus & Ex gratia of Rs.2,79,89,690/- and addition of expenses of Rs.7,90,282/- u/s. 14A of the Act made in the Scrutiny assessment order dated 23.03.2013 u/s 143(3) of the Act for the assessment year 2010-2011 by the Ld. Deputy Commissioner of Income Tax, Circle-1, Kolkata.

3.4. The assessee preferred appeal before the Ld. CIT(A) against the Assessment Order of the Ld. Deputy Commissioner of Income Tax, Circle-1, Kolkata for the Assessment Year 2010-2011. The Ld. CIT(A) vide his Order dated 29.01.2018 dismissed the appeal.

3.5. Being aggrieved, the assessee then preferred appeal before the ITAT against the Order dated 29.01.2018 of the Ld. CIT(A) for the Assessment Year 2010-11. The ITAT vide Order dated 16.01.2019 restored the matter to the file of the Ld. CIT(A) for fresh adjudication in accordance with law, after giving the assessee Company adequate opportunity of being heard.

3.6. Thus, the issues involved for the AY 2020-11 has not yet reached its finality and pending before the First Appellate Authority. Hence, the assessee has the valid right to carry forward the returned loss ignoring the assessed one, claimed the Ld. Counsel of the assessee.

3.7. The assessee had carried forward and claimed set off of the loss fully without recognising the disallowances and additions of the Ld. AO for the AY 2010-11.

3.8. However, Ld. AO ignored the above mentioned facts and after accepting the Returned Income of the assessee Company for the Assessment Year 2014-15, disallowed carry forward of loss to the extent of Rs.2,90,25,681/- vide its Assessment Order dated 27.09.2021 under Section 147 read with Section 144B of the Act.

4. Ld. Counsel for the assessee submitted that reduction of carried forward loss of Rs.2,90,25,681/- for the Assessment Year 2014-15 vide its Assessment Order dated 27.09.2021 under Section 147 read with Section 144B of the Act is erroneous, arbitrary and without any legal basis, as the impugned issues for the Assessment Year 2010-2011 has not yet reached its finality and pending before the first Appellate Authority.

4.1. Ld. Counsel submitted a chronology of events which took place to highlight the effect of pendency of AY 2010-11 which has a direct bearing on the penalty imposed by the Ld. AO in the impugned assessment year which is baseless and not in accordance with the provisions of the law. The chronology of the events is tabulated as under:

Assessment Year	Date of Order & Section	Facts
2010-2011	-	Returned loss of the assessee Rs. 31,37,77,840/-.
2010-2011	23.03.2013 143(3)	Ld. A. O. disallowed expenditure of Rs. 2,87,79,972/- and reduced returned loss of Rs. 31,37,77,840/- to Rs. 28,63,06,634/-. No demand.
2010-2011	29.01.2018	Ld. CIT(A)-22 dismissed the appeal of the assessee.
2010-2011	16.01.2019 →	Hon'ble ITAT, D Bench, Kolkata restored the issue to the file of the Ld. CIT(A) for fresh adjudication. Not yet heard by the Ld. CIT(A). So, the issue involved has not yet reached its finality.
2014-2015	-	In the ITR submitted on 18.09.2014, the assessee ignored the reduction of the loss by the Ld. A. O. in the A. Y. 2010-2011 and carried forward and set off the returned loss, as the matter is pending before the CIT(A).
2014-2015	27.09.2021 147	Ld. A. O. reduced the carried forward loss of Rs. 7,86,14,869/- to Rs. 4,95,89,188/- following the order of the Ld. A. O. for the A. Y. 2010-2011. No demand.
2014-2015	04.01.2022 271(1)(c)	Ld. A. O. imposed penalty of Rs. 94,17,382/- for furnishing inaccurate particulars of income by carrying forward excess loss of Rs. 2,90,25,681/-.
2014-2015	12.12.2022	Ld. CIT(A) dismissed the appeal against the imposition of penalty of Rs. 94,17,382/-.
2014-2015	12.09.2023 264	Revision petition filed by the assessee before the Ld. PCIT, Kolkata-1 against the order under Section 147 has been rejected by the Ld. PCIT, Kolkata-1.
Arguments		
<p>1. Assessee disclosed all the relevant facts relating to carry forward of loss before the Ld. A. O. and Hon'ble Appellate Authorities. Hence, no question of furnishing inaccurate particulars of income. Judgments relied upon: (a) CIT, Ahmedabad Vs. Reliance Petroproducts Private Limited [2010] 189 Taxman 322 (SC) [Please refer to Para No. 9 of the Judgment in Page No. 46 of the Paper Book]; and (b) The CIT (Bangalore) & The ACIT, International Taxation, Bangalore Vs. Makino Asia Private Limited [Hon'ble High Court of Karnataka at Bangalore, ITA No. 340/2007, Judgment Dated September 25, 2013] (Please refer to Para No. 13 of the Judgment in Page No. 56 of the Paper Book).</p>		
<p>2. Assessee has carried forward loss, exceeding the amount of loss determined by the Ld. A. O. Hence, the relevant 'Explanations 1, 2 and 4 of Section 271(1)(c) are not applicable in this case. So, the assessee is beyond the scope of mischief of Section 271(1)(c) and penalty under Section 271(1)(c) is not imposable.</p>		

4.2. According to the Ld. Counsel, assessee had disclosed all the relevant facts relating to carry forward of loss both before the Ld. AO as well as before the First Appellate Authority. There is no question of furnishing any inaccurate particulars of income as alleged by the Ld. AO for the purpose of imposing penalty. According to him, the explanation 1, 2 and 4 of sec. 271(1)(c) of the Act are not applicable in the case of the assessee and thus, the assessee is beyond scope of mischief of sec. 271(1)(c) and penalty u/s. 271(1)(c) is not imposable. To buttress his contention, he placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Chemicals Pvt. Ltd. (2010) 189 Taxman 322 (SC). He referred to para 9 of the said judgment wherein Hon'ble supreme Court has held in favour of the assessee by observing 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."

5. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

6. We have heard rival contentions and perused the material available on record. Admittedly, it is a fact on record that appeal for AY 2010-11 is pending before the First Appellate Authority pursuant to the order of Coordinate Bench of ITAT, Kolkata in assessee's own case which has a direct bearing on the carry forward of losses claimed

by the assessee and thus, allowed by the Ld. AO. Assessment year 20210-11 has not attained finality in respect of claim of loss by the assessee. Assessee has evidently demonstrated the status of carried forward and set off of business loss made by it in its return of income and those assessed by the Ld. AO. We find that assessee has supplied the relevant details in respect of carry forward of business losses and its set off of in the returns filed by it right from AY 2010-11 to AY 2017-18 which cannot be termed as incorrect or erroneous or false. What assessee has claimed is based on the position it has taken starting right from AY 2010-11 flowing down to the impugned assessment year 2014-15. Ld. AO has adopted the approach based on the assessment completed for AY 2010-11 but remains pending before the Ld. CIT(A) as the matter set aside by the Coordinate Bench of ITAT.

6.1. In the present case, we do not find that the assessee has furnished any inaccurate particulars of income in the return and, therefore, no liability would arise for imposition of penalty u/s. 271(1)(c) of the Act. We note that Hon'ble Karnataka High Court in the case of CIT Vs. Makino Asia Pvt. Ltd. in ITA No. 340/2007 while deciding the appeal in favour of the assessee on similar issue has observed that *"It is true, the propriety demands that an assessee who is otherwise not entitled to claim set off of the loss carried forward of the business, should avoid making such claim. But, such claim, in our opinion, would not attract levy of penalty."*

7. Considering the above stated facts relating to pendency of first appeal for AY 2010-11 and the judicial precedents in the case of Reliance Petro Products Pvt. Ltd. (supra) and Makino Asia Pvt. Ltd. (supra), the present case do not warrant imposition of penalty u/s. 271(1)(c) of the Act for the charge alleged by the Ld. AO that assessee has furnished inaccurate particular of income in respect of claim of

carry forward and set off of business losses. Accordingly, we delete the penalty so imposed. Accordingly, ground taken by the assessee is allowed.

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

Order is pronounced in the open court on 28th November, 2023

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28th November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata