

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE P.K. BANSAL, ACCOUNTANT MEMBER AND SHRI MUKUL Kr.
SHRAWAT, JUDICIAL MEMBER**

PAN NO. AAACN9961C

**ITA No. 683/Ind/2013
A.Y. : 2003-04**

Dy. CIT, Khandwa	Vs.	M/s.Nepa Limited, Nepanagar, Distt. Burhanpur.
(Appellant)		(Respondent)

Appellant by :	Shri R.A.Verma, Sr. DR
Revenue by :	Shri Pankaj Shah and Shri G.J. Shah, CAs

सुनवाई की तारीख/**Date of Hearing** : **12.09.2014**

घोषणा की तारीख /**Date of Pronouncement**: **13/10/2014**

आदेश/O R D E R

PER P.K.BANSAL, A.M.

This appeal has been filed by the Revenue against the order of CIT(A) dated 30.09.2013, cancelling the penalty imposed u/s 271(1)(c) of the Income-tax Act, 1961.

2. The Assessing Officer made an addition while completing the assessment u/s 143(3) of sum of Rs.60,17,733/- on account of provisions for bad and doubtful debts. He initiated penalty proceedings u/s 271(1)(c) without mentioning whether the penalty has been initiated for concealing the particulars of

income or furnishing of inaccurate particulars of income and ultimately vide order dated 24.12.2012 after giving the opportunity to the assessee, the Assessing Officer took the view that the assessee has furnished inaccurate particulars of income and the case is covered by the Explanation to Section 271(1)(c) and, therefore, he imposed the penalty u/s 271(1)(c) by observing as under :

“5. Thus, it is clear that the assessee has furnished inaccurate particulars of his income and the case is covered by the explanation to the Section 271(1)(c). Therefore, I am satisfied that this is a fit case for imposition of penalty.”

3. The assessee is in appeal before the CIT(A). The ld. CIT(A) noted that the assessee has debited the provision on account of bad debts amounting to Rs. 60,17,733/- in the profit and loss account and same was omitted to be included in the income of the assessee in computation. When the assessee was confronted by the Assessing Officer, the assessee realized the mistake and immediately withdrawn the claim. The Assessing Officer also noted in the penalty order dated 24.12.2012 under para 4 that the assessee committed mistake while showing the provisions for bad and doubtful debts and in turn not adding it back in the computation of income. On the basis of these observations, the

ld. CIT(A) took the view that it is a clear case or prima facie mistake on the part of the assessee not to add back the provisions for bad and doubtful debts in the computation of income. The Assessing Officer could have pointed out and dealt with this mistake u/s 143(1) of the Act while processing the return. The Assessing Officer has omitted to rectify the mistake. Therefore, he did not agree with the observations of the Assessing Officer that if the assessment was not done under scrutiny, the assessee would have succeeded in getting the wrong claim. Ultimately, the ld. CIT(A) took the view that when there is no motive to claim excess deduction, it cannot be considered as concealment or furnishing of inaccurate particulars of income, especially when there were carried forward business losses and unabsorbed depreciation running into crores in the case of the assessee. The ld. CIT(A), thus, cancelled the penalty relying on the following decisions :-

- 1) Laxmi Vilas Bank , 303 ITR 428 (Mad).
- 2) CIT vs. Reliance Petro Products,
322 ITR 158 (S. C.)

4. Before us, the ld. Authorized Representative reiterated the submission made before the CIT(A) and contended that the assessee was incurring heavy losses, since the last more than 20

years and carried forward losses are being left beyond eight years since last many years. The assessee had inadvertently left to add back the provisions of doubtful debts. Even he relied on the decision of the Vijaya Bank vs. CIT, 323 ITR 166 (S.C.) wherein it was categorically held that in the case of companies the provisions for doubtful debts can be allowed as a deduction u/s 36(1)(vii) of the Act. In view of the carried forward losses, he contended that there was not motive of excess claim. In this regard, he relied on the following decisions :-

- (i) ACIT vs. Raj Multiplex , 44 SOT 53 (Had)
- (ii) Amruta Organics Pvt.Ltd. vs. DCIT(I.T.A.No. 1121 /PN/2011)

He also contended that no penalty can be levied, once the mistake is noticed and the assessee has agreed to withdraw the claim. For this reliance was placed on the following decisions:

- (a) CIT vs. Lakshmi Vilas Bank, 303 ITR 428.
- (b) CIT vs. Shri Shardha Textile Processors (P) Ltd., 286 ITR 499.

It is merely a claim which is not sustainable in law. Therefore, no penalty can be levied. Reliance was placed in this regard on the decision of the CIT vs. Reliance Petro Products Limited, 322 ITR

158 (S.C.). Lastly, he contended that no penalty on making an erroneous claim can be levied. In this regard, he relied on the following decisions :-

- (A) CIT vs. Societex, I.T.A.No. 1497/2006 (Del).
- (B) CIT vs. Mahanagar Telephone Nigam Limited, (2011) 63 DTR 87.
- (C) Price Waterhouse Coopers Pvt.Ltd. vs. CIT, 348 ITR 306 (S. C.)
- (D) Indian Pesticides v. ITO, 16 TTJ 101 (Chd)
- (E) ACIT vs A.H. Wheeler, 132 ITD 34 (All).
- (F) CIT vs. S.P.K.Steels, 270 ITR 156 (MP)

5. The ld. Senior DR contended before us that it is not a case where the assessee has voluntarily withdrawn the claim. The claim has been withdrawn once it has been brought to the knowledge of the assessee by the Assessing Officer. Reliance was placed in this regard on the decision of Hon'ble Delhi High Court in the case of CIT v. Harparshad and Company Ltd, (2010)328 ITR 53(Del)

6. We have heard the rival submissions and carefully considered the same alongwith the orders of the tax authorities below. We have also gone through the case laws as have been

relied on before us. The provisions of Section 271(1)(c) of the Income-tax Act, 1961, reads as under :-

“271. (1) If the Assessing Officer or the Commissioner (Appeals)] or the Principal Commissioner or] Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(c) has concealed the particulars of his income or furnished inaccurate particulars of 61[such income,

he may direct that such person shall pay by way of penalty,—

iii) in the cases referred to in clause (c) or clause (d)], in addition to tax, if any, payable] by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits] or the furnishing of inaccurate particulars of such income or fringe benefits].

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Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or] Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him],

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

7. From the said provision, it is apparent that if the Assessing Officer in the course of any proceedings is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, then he may levy the penalty on the assessee. Thus, there are two different charges i.e. the concealment of particulars of income or furnishing of inaccurate particulars of income. The penalty can be imposed for a specific charge. Furnishing of inaccurate particulars means when the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are incorrect. Concealment of particulars of income means when the assessee has concealed the income and has not shown the income in its return or in its books of accounts.

8. Explanation (1) is a deeming provision and it is applicable when an amount is added or disallowed in computation of total income is deemed to represent the income in respect of which particulars have been concealed. Explanation (1) is not applicable in this case of furnishing inaccurate particulars of income. In this case, we noted that the Assessing Officer has initiated penalty proceedings u/s 271(1)(c) without pointing out whether the

assessee has concealed the particulars of income. The penalty ultimately was levied on the assessee for furnishing inaccurate particulars by observing that the case of the assessee is covered by the Explanation to Section 271(1)(c). We may observe that in the case of furnishing inaccurate particulars of income, the onus is on the Revenue to, prove that the assessee had furnished the inaccurate particulars, while in the case of concealment of particulars of income, where the Explanation (1) is applicable, the onus is on the assessee to prove that he has not concealed the particulars of income. As is apparent from the Explanation, this explanation clearly states where in respect of any facts material to the computation of total income of any person such person fails to offer an explanation or offers explanation which is found by the Assessing Officer to be false or such person offers an explanation, which he is not able to substantiate or fails to prove that such explanation is bona fide and with all the facts relating to the same and material to the computation of his total income have been disclosed by him. This is not denied that the particulars of provisions of doubtful debts have duly been shown by the assessee and debited in the audited profit and loss account. It is also not denied that the assessee has submitted the

explanation in reply to show cause notice issued by the Assessing Officer. Even though the Assessing Officer, in our opinion, failed to discharge his onus as he was not sure at the initiation of penalty u/s 271(1)(c) for which specific charge penalty has been initiated by the Assessing Officer. Even while levying the penalty also, the Assessing Officer simply relied on the explanation to Section 271(1)(c) even though he levied the penalty for furnishing the inaccurate particulars of income. This is apparent from the provisions of Section 271(1)(c) that explanation of Section 271(1)(c) is not applicable in case inaccurate particulars are furnished. Therefore, in our opinion, the basis of levy of penalty itself is not correct. In this regard, we rely on the decision of Hon'ble Gujarat High Court in the case of CIT vs. New Sorathia Engineering Co. vs. CIT, (2006) 282 ITR 642 (Guj), in which it was held (Head Note):-

“It is incumbent upon the Assessing Officer to state whether penalty was being levied for concealment of particulars of income by the assessee or whether any inaccurate particulars of income had been furnished by the assessee.”

9. Respectfully following the decision of the Hon'ble Gujarat High Court, we quash the penalty levied by the Assessing Officer.

10. In the result, the appeal of the Revenue is dismissed.

sd/-
(MUKUL Kr. SHRAWAT)
JUDICIAL MEMBER
INDORE; Dated :13/10/2014

sd/-
(P. K. BANSAL)
ACCOUNTANT MEMBER

CPU*SPS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A), INDORE
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद
/ DR, ITAT, INDORE
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt.Registrar)
ITAT, INDORE

1. Date of dictation- 17.09.2014
2. Date on which the typed draft is placed before the Dictating Member
.09.2014

3. Date on which the approved draft comes to the Sr.P.S./P.S.
4. Date on which the fair order is placed before the Dictating Member for Pronouncement
5. Date on which the file goes to the Bench Clerk.....
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Despatch of the Order.....