IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1402/PUN/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Galaxy Construction and Contractors Pvt. Ltd., 783/B, Vishnuprasad Building, Opp. Kamla Nehru Park, Erandwana, Pune- 411014. PAN : AACCG1951H	Vs.	DCIT, Circle-1(2), Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ramnath P. Murkunde

Date of hearing : 12.12.2022
Date of pronouncement : 02.01.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the ld. CIT(A)-1, Pune ['the CIT(A)'] dated 11.07.2019 for the assessment year 2014-15 confirming the levy of penalty of Rs.34,50,500/- u/s 271(1)(c) of the Income Tax Act, 1961 ('the Act').

2. Briefly, the facts of the case are that the appellant is a private limited company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of execution of civil contracts. The Return of Income for the assessment year

2014-15 was filed on 29.11.2014 declaring total income of Rs.Nil. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-1(2), Pune ('the Assessing Officer') vide order dated 29.12.2016 passed u/s 143(3) at a total income of Rs.1,11,64,130/- after making disallowance of interest u/s 36(1)(iii) of Rs.1,06,34,568/-, disallowance of Rs.5,45,398/- u/s 14A and disallowance of interest on TDS of Rs.1,03,940/-. It appears that the additions made by the Assessing Officer are not agitated in the appellate proceedings. Thus, the additions made by the Assessing Officer had attained the finality. Subsequently, the Assessing Officer initiated the penalty proceedings and levied penalty of Rs.34,50,500/- u/s 271(1)(c) in respect of disallowance of interest u/s 36(1)(iii) by holding that the appellant is guilty of concealing inaccurate particulars of income vide order dated 28.06.2017 and also rejecting the contention of the appellant that no disallowance u/s 36(1)(iii) was required in view of the fact that the own funds were utilized for making the advances to the sister concern for the business purpose.

3. Being aggrieved by the penalty order, an appeal was filed before the ld. CIT(A), who vide impugned order confirmed the levy of penalty on the ground that the appellant had failed to substantiate that the advance was made for business purpose and also rejected that the ratio of the decision of the Hon'ble Bombay High Court in

the case of CIT vs. Dalmia Dyechem Industries Ltd. in I.T. Appeal No.1396 of 2013 is applicable. The ld. CIT(A) also rejected the contention of the appellant that the penalty order is not valid for non-striking of the relevant column of the satisfaction in the show-cause notice issued by the Assessing Officer relying upon the decision of the Hon'ble Bombay High Court in the case of CIT vs. Smt. Kaushalya, 75 Taxman 549 (Bombay), wherein, it was held that when the assessee was fully aware of the exact charge determined against the assessee, non-striking of the relevant column of the show-cause notice does not invalidate the penalty proceedings, as it is a mere technical.

4. Being aggrieved by the decision of the ld. CIT(A), the appellant is in appeal before us in the present appeal.

5. When the appeal was called on, none appeared on the behalf of the appellant-assessee despite due service of notice of hearing. Therefore, we proceed to dispose of this appeal after hearing the ld. Sr. DR.

6. Before us, the ld. Sr. DR submits that the order of the ld. CIT(A) is based on the proper appreciation of facts. The ld. CIT(A) relying upon the decision of the Hon'ble Jurisdictional High Court referred supra as regards to the defects in the show-cause notice held that show cause notice is valid in law and held that the appellant had failed to discharge the onus of demonstrating that the

loans and advances are made for the business purpose. Thus, it was submitted that this is clearly a fit case for levy of penalty u/s 271(1)(c) of the Act.

7. We heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to levy of penalty under the provisions of section 271(1)(c) of the Act. The penalty was levied by the Assessing Officer in respect of addition made under the provisions of section 36(1)(iii) of the Act. It is an admitted fact that the appellant had not agitated the additions in the appellate proceedings. It is clearly settled position of law that when an assessee not agitated the addition in the appellate proceedings does not amount to either concealment of income or furnishing of inaccurate particulars of income. We have carefully gone through the assessment order and find that the addition u/s 36(1)(iii) was made by the Assessing Officer because the appellant had failed to demonstrate the advances to sister concern were made for the business purpose. A mere making claim which is not sustainable by law itself will not amount to furnish inaccurate particulars of income as held by the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC). The held portions of the said judgement of the Hon'ble Supreme Court (supra) are reproduced as below :-

"A glance of provision of section 271(1)(c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. [Para 7]

Therefore, it must be shown that the conditions under section 271(1)(c) exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed, because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. [Para 8]

The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was 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). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]

The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was 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. Such contention could not be accepted 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 attract the penalty under section 271(1)(c). If the contention

of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10]

Therefore, the appeal filed by the revenue had no merits and was to be dismissed."

8. In the light of above legal position, we are of the considered opinion that the appellant cannot be held guilty of furnishing inaccurate particulars of income and, therefore, the Assessing Officer was not justified in levy of penalty u/s 271(1)(c) of the Act. Therefore, we direct the Assessing Officer to delete the penalty of Rs.34,50,500/- levied u/s 271(1)(c) of the Act.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 02nd day of January, 2023.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 02nd January, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**A**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.