IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI S RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 2845/Mum/2023
(Assessment Year: 2015-16)

Eureka Outsourcing Solutions Pvt. Ltd. 5th Floor, High Street cum Highland Corporate Centre, Kapurbawadi, Thane-400 607	Vs.	Dy. CIT, Circle (1) Thane
PAN/GIR No. AAACL 7408 E		
(**Assessee**)	:	(**Respondent**)

Assessee by	:	Shri Vijaykumar S. Biyani
Respondent by	:	Shri P. D. Choughule

Date of Hearing	:	13.12.2023
Date of Pronouncement	:	23.01.2024

O R D E R

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The solitary ground of appeal is the penalty levied u/s. 271(1)(c) of the Act amounting to Rs.3,39,616/-.

3. It is observed that the appeal is time barred by one day for which the learned Authorised Representative ('ld. AR' for short) prayed that the said delay may be condoned.

4. We have heard both the sides, we deem it fit to condone the delay of one day in filing the present appeal. Delay condoned.

5. The brief facts of the case are that the assessee company is engaged in the business of call centre and had filed its return of income dated 29.09.2015, declaring total loss of Rs.21,07,072/-. The assessee's case was selected for scrutiny under the CASS for verifying "high ratio of refund to TDS, certificate u/s. 197 for 'nil' or lower deduction of TDS, depreciation claimed at higher rate/higher additional depreciation claimed, low income shown by large contractors, mismatch in sales turnover reported in audit report and ITR and mismatch in amount paid to related persons u/s. 40A(2)(b) reported in the audit report and ITR". The ld. A.O. vide order dated 06.12.2017 passed the assessment order u/s. 143(3) of the Act determined the total loss at Rs.(-)10,07,990/- after making a disallowance on the difference amount as lease equalization where the assessee has inadvertently accounted the rent on straight line method as against the regular practice where rent agreements have clause for yearly increase in rent after considering the disallowance of Rs.2,97,436/- made by the assessee instead of Rs.13,96,517/-. The ld. A.O. also initiated the penalty proceedings for furnishing inaccurate particulars of income. The ld. A.O. vide order dated 28.06.2018 levied penalty amounting to Rs.3,39,616/- u/s. 271(1)(c) of the Act.

6. The assessee preferred an appeal before the first appellate authority challenging the order of the ld. A.O. in levying the impugned penalty.

7. The ld. CIT(A) vide order dated 14.06.2023 upheld the penalty levied by the ld. A.O. for the reason that the assessee had pointed out the mistake in disallowing a lesser

amount only during the scrutiny proceeding and that the assessee being a company must have engaged professional assistance for furnishing correct particulars of income thereby holding that the error was not inadvertent rather intentional.

8. The assessee is in appeal before us, challenging the order of the ld. CIT(A) upholding the penalty levied by the ld. A.O.

9. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee had inadvertently accounted the rent for the premises which has been taken on long term lease by the assessee with a clause for periodical increase in rent on straight line method where the rent agreements has a clause for yearly increase in rent. This difference in the lease equalization has been inadvertently disallowed by the assessee for a lesser quantum of Rs.2,97,436/- instead of Rs.13,96,517/- which the ld. AR contends that was not deliberate or intentional. The ld. AR further contended that the assessee itself has voluntarily sought for revision of computation of the *bona fide* mistake during the assessment proceeding. The ld. AR relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd.* [2010] 322 ITR 158 (SC) and the decision of Hon'ble Bombay High Court in the case of *CIT vs. Somany Evergreen Knits Ltd.* [2013] 35 taxmann.com 529.

10. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and stated that the assessee has intentionally suppressed the actual disallowance and that it was only during the pendency of the assessment proceeding that the assessee came forward to disclose the said discrepancy. The ld. DR

relied on the decision of the Hon'ble Kerala High Court in the case of *CIT vs. Sreenivasa Pai* [2000] 242 ITR 29 (Ker.), wherein it was held that while computing the total income, the amount added or disallowed is deemed to represent the income and that the same would amount to concealment. The ld. DR relied on the order of the lower authorities.

11. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has disallowed a lesser amount of Rs.2,97,436/- instead of Rs.13,96,517/- being the difference in the lease equalization which the assessee contends that has been inadvertently accounted the rent on straight line method where the rent agreements have clause for yearly increase in rent. The assessee's contention is that the said mistake is inadvertent and *bona fide* without any intention on the part of the assessee to suppress the same. The Revenue's contention is that the assessee had not voluntarily disclosed the same and during the assessment proceeding it had come forward to revise the computation in view of the said mistake. The ld. A.O. had levied the penalty u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income and rejected the assessee's contention that the same was an afterthought. The lower authorities have rejected the assessee's contention that it had not discharged its initial onus to establish the correctness of the claim made by it in the return of income and that the assessee ought to have rectified and revised its return of income at an earlier opportunity. The explanation given by the assessee did not pay heed before the lower authorities.

12. In the above factual matrix of the case, we deem it fit to decide the moot question whether the assessee has malafidely consolidated the particulars of income or the same amounted to an inadvertent mistake on the part of the assessee. For this, we would place

reliance on the decision of Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd.* (supra) relied upon by the ld. AR where it has been held that for the purpose of levying penalty, the provisions of the Act to be strictly covered and that merely making an incorrect claim does not tantamount to furnishing of inaccurate particulars. The relevant extract of the said decision is cited hereunder for ease of reference:

> *7. As against this, learned Counsel appearing on behalf of the respondent pointed out that the language of section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under :—*
>
> > *"271. (1) If the Assessing Officer or the Commissioner (Appeals) or the 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 such income."*
>
> *A glance at this provision 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. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can 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 inaccurate particulars. In CITv. Atul Mohan Bindal [2009] 9 SCC 589, where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of Indiav. Dharamendra Textile Processors [2008] 13 SCC 369, as also, the decision in Union of Indiav. Rajasthan Spg. & Wvg. Mills [2009] 13 SCC 448 and reiterated in para 13 that :—*
>
> > *"13. It goes without saying that for applicability of section 271(1)(c), conditions stated therein must exist."*

8. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must 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. In Dilip N. Shroffv. Jt. CIT [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff's case (supra) was upset. In Dharamendra Textile Processors' case (supra), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra). However, it must be pointed out that in Dharamendra Textile Processors' case (supra), no fault was found with the reasoning in the decision in Dilip N. Shroff's case (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff's case (supra) to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff's case (supra) was overruled.

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(1)(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.*

13. The assessee has also placed reliance on the decision of the Hon'ble Apex Court in the case of *Price Waterhouse Coopers (P) Ltd. vs. CIT* [2012] 25 Taxmann.com 400 (SC). From the above stated decisions, it is pertinent to point out that even in the present case, the assessee was not queried about the provisions of lease equalization but had voluntarily by written submission stated to the ld. A.O. that the disallowance of Rs.10,99,081/- was the difference between the actual amount and the disallowance made by the assessee which was claimed to be a *bona fide* error on the part of the assessee. The above action of the assessee evidences that the assessee has not malafidely made a lesser disallowance in the return of income filed by it.

14. From the above observation, we find no justification in the penalty levied by the lower authorities considering the factual aspect of the present case and, therefore, we deem it fit to direct the ld. A.O. to delete the impugned penalty levied. Hence, the grounds raised by the assessee are allowed.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.01.2024

Sd/- Sd/-

(S Rifaur Rahman)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 23.01.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai