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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 46/2013**

RAVINDRA BAHL Appellant
Through: Mr.Kaanan Kapur, Advocate

versus
ASST. DIRECTOR OF INCOME TAX, CIRCEL-1-(1) Respondent
Through: Mr.Sanjeev Sabharwal, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **07.10.2013**

1. This appeal by the assessee which pertains to assessment year 2000-01 raises the following substantial question of law:

“Whether the Income Tax Appellate Tribunal was justified in holding that the assessee has not been able to discharge onus under Explanation 1 to Section 271(1)(c) of the Income Tax Act, 1961?”

2. The assessee, an individual, had received US \$ 10 lacs pursuant to an agreement dated 6.4.1999, from HCL-Deluxe, N.V.(“HDX” for short). In the quantum proceedings, this receipt has been held to be taxable as revenue receipt. We are not referring to the quantum proceedings and the orders passed therein in detail to avoid repetition and prolixity. Relevant facts have been adverted to below.

3. The assessing officer initiated and levied penalty of Rs.1,43,33,963/- under Section 271(1)(c) of the Income Tax Act

1961 (for short, 'the Act'). The appellant, however, succeeded before the Commissioner of Income Tax (Appeals) who deleted the penalty observing as under:

"10. In the facts and circumstances of this case, it is noted that the appellant made a claim that certain receipts were capital in nature, and therefore, not liable to tax. However, probably realizing the contentious nature of the claim, full taxes were paid on the 'capital' receipt before filing of the return. The return was accompanied by a detailed note on the claim and, with a claim for refund. It is the appellant's case that there has been no concealment, as all facts were disclosed in the return of income itself. It is also argued that the explanation offered by him was on the basis of bona fide belief, and even if such claim was not accepted by the Assessing Officer, the explanation was neither false, nor unsubstantiated, nor mala fide. The bona fides of the appellant are proven by the disclosure in the return and the payment of taxes. After careful consideration, I am inclined to agree with this contention. The penalty order mainly relies on the provisions of section 273B, to hold that there was no 'reasonable cause' for failure to comply with the requirement of law. To my mind, the protection of section 273B i.e. of reasonable cause, is only to be applied to such assesses who have in the first place, concealed their income, or furnished inaccurate particulars of their income. I find the element of concealment missing in this case. The Assessing Officer has also considered the 'potential' revenue

loss if the case had not been scrutinized. Against, this seems far-fetched, considering the detailed not annexed to the return, and the refund claimed of Rs.1,45,19, 285/- at that time. The fact that the appellant succeeded partly in its claim at the first appeal stage, indicates that two views were possible on the issue. The act of the appellant in making the claim does not warrant imposition of penalty u/s 271(1)(c). Thus, the penalty order deserves to be cancelled on merits as well. However, as the penalty order has been cancelled, as held above, on grounds of being barred by time the above discussion is academic only.”

4. The Tribunal reversed the said findings after referring to Section 17(3) Clauses (i) & (iii) of the Act and held that the said provisions were clear that profits in lieu of salary includes the amount of compensation due and or received by the assessee from his employer or former employer at or in connection with termination of his employment or modification of the terms and conditions relating thereto or any amount due to or received after cessation of employment. After referring to the said sections, the Tribunal restored the order of the assessing officer imposing penalty stating:

“In the appeals preferred by the parties before raising the issue on the taxability of the receipt the Tribunal vide its order dated 31.3.2009 in ITA nos. 3365 & 2629/Del/2004 has held that the amount paid to the assessee was because of termination of employment in terms of letter dated

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6.4.1991, therefore, the payment of USD 10 lac received by the assessee is chargeable to tax as profit in lieu of salary u/s 17(3) (i) of the Act. The Tribunal has discussed the issue in detail and decided it in view of several decisions relied upon by the Parties before it. The assessee had placed reliance on several decisions like CIT v. Shyam Sunder Chhapria 305 ITR 181 (MP); Rohitasav Chand v. CIT 306 ITR 242 and Sourabh Srivastava v. DCIT (2008) 111 ITD 287 (Del) (SB). The Tribunal has distinguished these decisions on facts with this observation that in these cases the assessee was paid non-complete fee whereas in the case of the present assessee the payment has been made for termination of services. We are thus of the view that when provisions u/s 17(3) of the Act were clear and the amount whatever nomenclature can be attached to it was admittedly paid to the assessee due to termination of employer-employee relating, there was no scope of any debate that the amount received was not profits in lieu of salary within the meaning of the said provisions of u/s 17(3) of the Act. We are thus of the view that there was no any reason available with the assessee for nurturing a belief that the amount received is a capital receipt not chargeable to tax. Merely by depositing the due tax on the amount received the bona fide of the assessee in not declaring the receipt as income in its return of income is not established. The benefit of Explanation 1 to section 271 (1) (C) of the Act for the exemption of levy of penalty is available to an assessee when assessee is able to

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establish that the explanation furnished by him for non-disclosure of payment of the receipt as income in his return of income is bona fide. The requirement for availing the benefit u/s 271(1) (C) Explanation 1 of the Act for exemption from penal action under the said provisions are available only if the assessee is able to prove that such explanation is bona fide and that all the facts relating to the income and material to the computation of his total income have been disclosed by him."

5. Tribunal has accepted that the assessee had filed a note with the return disclosing of facts but observed that the dispute before them was whether the claim made by the assessee was bona fide and whether the assessee, in fact, nurtured the belief that the receipt was not chargeable to tax. Reference was made to the decision of the Delhi High Court in CIT vs. Zoom Communication Private Limited; [2010] 327 ITR 510(Del) and the Supreme Court in CIT v. Reliance Petroproducts P. Ltd. [2010] 322 ITR 158(SC). It was held that the assessee erred in not declaring the receipt in question as revenue receipt and, therefore, had furnished inaccurate particulars of income, attracting penalty action under Section 271(1)(c) of the Act.

6. The two undisputed factual positions are;

(1) that the assessee had paid advance tax on USD 10 lacs equivalent to INR 4,34,36,250/-. In the return of income filed by the appellant on 27.6.2000, he had claimed refund of

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Rs.1,45,19,285/-. The total taxes paid by the appellant were Rs.1,65,44,631/-.

(2) Along with the return of income the appellant had enclosed the following note:

01. The assessee, Shri Ravinder Bahl, is an individual. He was employed by HCL-DELUXE, N.V. ("HDX"), a company incorporated under the laws of Netherland. HCL-DELUXE, N.V. ("HDX") has a subsidiary company in India known as HCL-DELUXE,(INDIA), incorporated under the Indian laws. Shri Ravinder Bahl was required to attend to International business of "HDX", including that of HCL-DELUXE INC USA. In addition he was also required to administer and attend to business operations of HCL-DELUXE (INDIA) in India. The appointment of Shri Ravinder Bahl and payment of remuneration to him was governed by terms and conditions as stated in letter dated 22.06.98, a copy of which is filed here with these papers.
02. "HDX" restructured its organizational set up in March 99.
03. "HDX" offered continued employment to Shri Ravinder Bahl on terms and conditions as laid out in letter dated April,6, 1999. A copy of this letter is filed here with these papers. This letter carried several pre-conditions. It offered renewed employment to Shri Ravinder Bahl for a period of 4 months only, i.e. for the period 06.04.99 to 01.08.99. For this period of four months. "HDX" offered to pay Shri Ravinder Bahl

remuneration on the same terms, conditions and scale, as was previously paid to him under letter dated 22.06.98. Refer para 2 of letter dtd. 06.04.99). In addition, "HDX" offered to pay Shri R. Bahl a further sum of US \$ 10,00,000.00 styled "Extra Ordinary compensation, "upon Shri Ravinder Bahl agreeing to sign in advance and return letter dated 06.04.99 and to carry out and also agreeing to refrain from carrying out certain acts specified under various paragraphs of the letter dated 06.04.99. This amount of US \$ 10,00,000.00 was paid in two instalments as under:-

- a) US \$ 5,00,000 upon prior signature and return of letter dated 06.04.99 by Shri R. Bahl to "HDX". (Refer para 3 of letter dtd. 06.04.99).
- b) The balance of US \$ 50,00,00 on the final day as an employee of "HDX" (Refer same para of letter dtd 06.04.99.

- 04. Shri Ravinder Bahl agreed and accepted.
- 05. "HDX" paid US \$ 10,00,000 to Shri R. Bahl in U.S.A. Subsequently this amount was remitted to India, and credited to assessee's Saving account with CITI Bank.
- 06. Remuneration paid each month in India in Indian Rupees by "HDX" to Shri R. Bahl for the period 06.04.99 to 01.08.99 under para 2 of letter dated 06.04.99 has been included by the assessee in his return of income filed for the Ass. Year 2000-2001 and offered to be taxed.

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07. Services of Shri Ravinder Bahl with "HDX" came to an end on 01.08.99.

08. The assessee credited the proceeds of US \$ 10,00,000 (equivalent INR 4,34,36,250/-) directly to his capital account. The assessee is of the view that this receipt is a capital receipt, not subject to Indian Tax laws. He has accordingly not included this receipt in his return of Income above, and has explained facts by way of this note. The assessee submits that this receipt is not taxable for reasons made as below:-

8.01 US \$ 5,00,000 paid to the assessee at the time of signing and returning in advance letter dtd 06.04.99 is not a receipt against any services rendered by Shri R. Bahl to "HDX" either as an employee, of "HDX" or in any other capacity. There was no legal or moral obligation on the part of "HDX" to pay to Shri R. Bahl, OR, on the part of the assessee to claim from "HDX" this amount under any circumstances. The earlier "Employer", "Employee" relationship between the assessee and "HDX" governed by the terms of letter datd 22.06.99 had apparently come to an end on 31.03.99 with no commitments or obligation on the part of "HDX" to pay Shri R. Bahl, OR, on the part of Shri R. Bahl to receive any monetary consideration from "HDX". As on 06.04.99, the "Employer", "Employee" relationship between the assessee and "HDX" and Shri R. Bahl had not been set up. The renewed

relationship between them and payment of US \$ 10,00,000 by "HDX" to Shri R. Bahl depended solely upon Shri R. Bahl signing or refusing to sign the letter dated 06.04.99, and agreeing to abide by the terms laid down in the said letter. "HDX" offer to pay Shri R. Bahl is borne out of commercial expediency and prudent business policy to ward off business competition and to safeguard and protect its business operations/interest in India.

8.02 Shri R. Bahl was required to perform/refrain from performing the following:-

8.03 During the period 06.04.99 to 01.08.99, or such earlier date as was to be established by "HDX", to cooperate fully with the Deluxe Management, at its direction, in its selection, appointment, orientation and transition to a successor chief executive officer, including personally introducing such person to personnel of "HDX" and all significant suppliers and customers know to Shri R. Bahl. (Refer para 4 of letter dtd. 06.04.99).

8.04 For a period of three years and four months from 06.04.99, Shri R. Bahl is not to divulge, communicate or pass on any confidential information of HDX or DELUXE or any of their respective subsidiaries of any person who is not in the employment of "HDX" or "DELUXE" or any of their respective subsidiaries and who does not have a need to know such information to

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perform the duties of his or her position. Refer para 6 of letter dtd. 06.04.99).

8.05 For a period of one year and four months from 06.04.99, Shri R.Bahl is not to, directly or indirectly, (which shall include any actions taken on behalf of any third party), to recruit, hire or discuss employment with any person who is, or at any time on or after January 1, 1999 has been an employee of HDX or any of its subsidiaries or otherwise engaged in any activities designed to recruit or induce personnel of HDX and its subsidiaries to leave their employment with HDX or its subsidiaries. (Refer para 7 of letter dtd. 06.04.99).

8.06 For a period of one year and four months from 06.04.99, Shri R.Bahl is not to, directly or indirectly, accept any interest in any project, program or venture, or any commission, finder's fee or other compensation in connection with any project, program or venture involving "HDX" or its subsidiaries in which Shri R. Bahl was engaged in the planning or implementation during his employment with HDX. (Refer para 8 of letter dtd 06.04.99).

8.07 For a period of one year and four months from 06.04.99, Shri R. Bahl is not to, except as an employee of "HDX, directly or indirectly, take advantage of a corporate opportunity unless Shri R. Bahl first offered the opportunity to HDX, and make disclosure of the

material facts, and HDX rejects the opportunity. A "corporate opportunity" has been defined to be an opportunity to engage in a business activity which is closely related to the business in which "HDX" or one of its subsidiaries is or expects to be engaged, and which is brought to the attention of Shri R. Bahl in connection with the performance of his duties for "HDX", or is one that in the course of the performance of his duties for "HDX" is reasonably expected to be of interest to "HDX" or its subsidiaries. (Refer para 9 of letter dtd 06.04.99).

8.08 Further Shri R. Bahl was to assign to "HDX" or an "HDX" subsidiary designated by "HDX", all rights, title and interest (collectively in this paragraph, "right") in and to any and all inventions, discoveries and ideas and all other work products related to the business of "HDX" and its subsidiaries which Shri Ravinder Bahl conceived, reduced to practice, reduced to writing or other storage media, or otherwise created during his employment with "HDX" or at any time within one year thereafter. Shri R. Bahl was also to execute, with out delay, such additional assignments and other documents as "HDX" determined to be necessary or desirable to sell, assign, transfer, confirm or otherwise perfect such rights in and to "HDX" or its subsidiaries. (Refer para 10 of letter dtd 06.04.99).

8.09 Shri Ravinder Bahl was also to give up, as further described hereinafter, all claims against HDX and DELUXE and their respective subsidiaries and each of their respective directors, officers, employees and representatives the "Released Parties"). Shri R. Bahl also agreed not to commence any law suit or other legal proceeding or file or otherwise assert any complaint or other demand against the Released Parties based on any claim. "Claims" were defined to mean any rights that Shri R. Bahl presently had or which he may have thereafter to any compensation, reimbursement or other for of relief from the Released Parties whether or not Shri Ravinder Bahl knew about those rights, including but not limited to, claims for breach of contract, fraud or misrepresentation, violation of any antidiscrimination, disability, civil rights or other law or laws or regulations of any government or governmental authority, defamation, emotional distress, breach of any implied covenant, wrongful termination of employment and any other claim for unlawful employment practices. It also extended to other events and circumstances as defined in para 15, of letter dtd.06.4.99. (Refer para 8 of letter dtd 06.04.99)."

7. The "facts" stated in the note are not undisputed. It is not the case of the revenue that the facts stated in the note are incorrect or inaccurately record relevant clauses of the settlement between the

appellant and the HDX. The quantum of receipt or the money received by the appellant is not debated and has been accepted by the revenue.

8. At this stage, it would be important to reproduce Section 271(1)(c) of the Act and Explanation I thereto:-

“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—

(a)

(b)

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

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 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.”

9. The penalty under Section 271(1)(c) is imposed when an assessee conceals his income or furnishes inaccurate particulars. In terms of the explanation, we have to examine and decide whether the case falls within Sub-clause ‘A’ or ‘B’ and the effect thereof. Sub-clause A applies when the assessee fails to furnish any explanation or the explanation is found to be false. Sub-clause ‘B’ applies when explanation is offered by an assessee but not substantiated.
10. In the present case as noted above, the assessee had furnished his explanation and the same was not found to be “factually” incorrect or false. The legal inference drawn from the “facts”, i.e., the receipt was revenue in nature, was found to be untenable. Sub-clause ‘B’ to Explanation is, therefore, applicable and we have to examine whether the twin requirements mentioned in Sub-clause ‘B’ are satisfied. The first condition of Sub-clause ‘B’ to Explanation 1 is that the assessee should have furnished facts and material relating to computation of his income. Quantum of payment and the terms and conditions on which the payment had been received were clearly disclosed in the note. In our opinion, therefore, the appellant assessee had stated full and correct facts and nothing was concealed or withheld from the revenue. The first requirement is therefore satisfied.

11. The second requirement of Sub-clause 'B' to the Explanation 1 is that the claim or grounds for making the claim should be bona fide i.e. the claim should have been made in good faith. This issue has been decided against the appellant as the receipt was revenue in nature and the contest/claim made was not bona fide or plausible. The explanation given by the appellant assessee that the receipt was capital receipt has not been accepted on legal grounds relying upon Section 17 (3) sub-clauses (i) & (iii).
12. The note quoted above elucidates and highlights that the payment received included several promises and obligations accepted by the appellant post termination of the employment. These obligations have been highlighted in paragraphs 8.03 to 8.09. The contention of the appellant was that in view of the said clauses, the payment received was capital in nature and should not be taxed as a revenue receipt. The payment received was not covered by Section 17(3) Sub-clause (i) and (iii). Having considered and examined the note, submission and contentions raised, it cannot be said that the pleas raised by the appellant were devoid of substance and deserved unceremonious or outright rejection. Pleas and issues raised merited examination and consideration. They were plausible. The pleas have to be read and noticed, along with the factual position that the appellant had paid full amount of advance tax after including Rs.4,34,36,250/-. He had asked for refund of Rs.1,45,11,285/-. The assessing officer, therefore, had occasion and cause to examine the return before

sanctioning and issuing refund of Rs.1,45,11,285/-. The claim made and the contention would not have escaped notice or ignored. It would have attracted attention of the assessing officer and indeed the assessing officer took notice. The appellant had ensured that the assessing officer fully applies his mind to the contentions and issues raised. Good faith is apparent. These are relevant factors when we examine whether the conduct/explanation was bona fide or not. Commissioner (Appeals) had in the quantum proceedings had partly accepted the claim of the assessee and had observed that 50% of the amount received was capital in nature, while the balance amount was taxable as a revenue receipt.

13. Taxation provisions can be complex, debatable and capable of different interpretation. When an assessee discloses true and correct facts; takes a position in law and the position was plausible and arguable, penalty should not be imposed. It is not unusual for an assessee to file or make a claim but not succeeded for legal or technical reasons. But every addition or disallowance made does not justify or mandate levy of penalty. Penalty is not an automatic or mandatory consequence, when addition is made, an expense is disallowed or a receipt is taxed as a revenue receipt. In *Shervani Hospitalities v. CIT*; (2013) 5 AD Delhi 601 it has been observed as under:

“14. Thus penalty under Section 271(1)(c) is imposed when an assessee conceals his

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income or furnishes inaccurate particulars. In terms of the Explanation, we have to examine whether the case falls within the two limbs viz. sub-clause (A) or (B) and the effect thereof. Clause A applies when an assessee fails to furnish any explanation or when an explanation is found to be false. In respect of the two additions being examined, the assessee had furnished an explanation and the explanation has not been found to be factually incorrect or false. The fact that the expenditure was incurred and spent by the assessee is not disputed or denied but the claim of the assessee that it should be treated as revenue expense has been held to be a wrong claim. It is a case where the assessee was not been able to substantiate the claim. The explanation given by him has not been accepted on legal grounds. Sub-clause (B) to the Explanation is applicable and we have to examine whether two conditions; (i) the assessee has been able to show his explanation was bona fide and (ii) he had furnished facts and material relating to the computation of his income had been disclosed. Onus on establishing that the assessee satisfies the two conditions is on him i.e. the assessee. We will examine the second condition first.

We have extensively referred to these judgments, only to show that the issue raised by the assessee was debatable and capable of two views. The assessee had an arguable case or had taken a bonafide plea. The assessee had given his explanation and categorically and clearly stated the true and full facts in the return itself. He did not try

to camouflage or cover up the expenses claimed. It is not uncommon and unusual for an assessee to bonafidely claim a particular expenditure as a revenue deduction and expense but not succeed. Every addition or disallowance made does not justify and mandate levy of penalty for concealment under Section 271(1)(c) of the Act. Levy of penalty is not an automatic consequence when an addition is made by disallowing an expense and by not accepting the interpretation given by the assessee. As stated above, the plea and contention raised by the assessee has to be examined before it is decided whether or not the assessee has been able to bring his case within the four corners of the Explanation. 20. Explanation 1 clearly stipulates that the penalty can be imposed when the details furnished by the assessee are found to be incorrect, erroneous and false. Merely making a claim which is held as not sustainable under law should not lead to penalization, when the assessee had furnished full details in the return itself and the claim is a debatable, reasonably plausible or may well have been accepted. (See *CIT vs. Reliance Petro Product Pvt. Ltd.* 2010 322 ITR 158 (SC), *CIT vs. Dharampal Premchand Ltd.* 2011 329 ITR 572 (Del.), *CIT vs. Societex* ITA No. 1190/2011 decided on 19.07.2012, by this Court). In *Karan Raghav Exports vs. CIT* (2012)349 ITR 112(Del.), it has been observed as under:-

“14. On the second aspect, we record that a wrong deduction claimed can amount to furnishing of incorrect particulars. However, that is not the

issue in question. The issue in question is whether the appellant has been able to discharge the onus under Explanation 1 to Section 271 and show that the claim made by them or the explanation offered with regard to the claim made was bona fide and that the facts relating to the same and material for computation of the total income had been disclosed. These are two facets of clause (B) to Explanation 1. As far as disclosure of facts is concerned, this is clear from the note, which was attached with the return itself. We have quoted the relevant portion of the note above. Full and correct facts have been stated in the said note. The other question is whether the claim made was palpably wrong and legally untenable or a debatable and plausible claim on which the assessee did not succeed on legal interpretation. We have examined the nature of the claim made and the findings recorded by the High Court in their order dated 1st November, 2010. The claim made by the appellant may have been rejected, but it cannot be said that the same was not plausible or legally tenable. This aspect has been discussed above and it has been held that the claim made was bona fide. Regarding the legal opinion in writing, it is not mandatory for a person to obtain legal opinion in writing. Assesseees do take legal opinion and in the present case the return of income was duly audited.

Claim for depreciation is a technical claim based on interpretation of legal provision. Legal opinion, in such cases, is frequently given by Chartered Accountants to help the company to prepare its return of taxable income. In the present case, there is no allegation that the quantum of depreciation claim was incorrectly computed. The note itself indicates that it is written by a professional."

14. In Commissioner of Income Tax v. Zoom Communication P. Ltd.; [2010] 327 ITR 510 (Del), it was observed:

"The proposition of law which emerges from this case, when considered in the backdrop of the facts of the case before the court, is that so long as the assessee has not concealed any material fact or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty under section 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that he either substantiates the explanation offered by him or the explanation, even if not substantiated, is found to be bona fide. If the explanation is neither substantiated nor shown to be bona fide, Explanation 1 to section 271(1)(c) would come in to play and the assessee will be liable to for the prescribed penalty.

The assessee before us is a company which declared an income of Rs.1,21,49,861/- and accounts of which are mandatorily subjected to audit. It is not the case of the assessee that it was advised that

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the amount of income tax paid by it could be claimed as a revenue expenditure. It is also not the case of the assessee that deduction of income-tax paid by it was a debatable issue. In fact, in view of the specific provisions contained in section 40(a)(ii) of the Act, no such advice could be given by an auditor or other tax expert. No such advice has been claimed by the assessee even with respect to the amount claimed as deduction on account of certain equipment having become useless and having been written off. As noticed earlier, the Tribunal was entirely wrong in saying that section 32(1)(iii) of the Act applies to such a deduction. It was not the contention before us that claiming of such a deduction under section 32(1)(iii) was a debatable issue on which there were two opinions prevailing at the relevant time. In fact, the assessee did not claim, either before the Assessing Officer or before the Commissioner of Income-tax (Appeals) that such a deduction was permissible under section 32(1)(iii) of the Act. No such contention on behalf of the assessee finds noted in the order of the Tribunal. Thus, it was the Tribunal which took the view that section 32(1)(iii) could be attracted to the deduction claimed by the assessee. It is also not the case of the assessee that it was under a bona fide belief that these two amounts could be claimed as revenue expenditure. The assessee, in fact, outrightly conceded before the Assessing Officer that these amounts could not have been claimed as revenue deductions. The only plea taken by the assessee before the income-tax authorities was that it was due to oversight

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that the amount of income –tax paid by the assessee as well as the amount claimed as deduction on account of certain equipment being written off could not be added back in the computation of income.”

15. In *Devsons P. Ltd. v. CIT* [2010] 329 ITR 483 (Del.), it has been held that when a legal issue arises for consideration, which is debatable but the claim made by the assessee is not fully accepted, there is no justification to invoke the penalty provisions under Section 271(1)(c) of the Act. Divergent legal views on legal interpretation of a Statute are not known, and it is not necessary there that should be uniformity or consensus of opinion on the aspects of law and the assessee must accept adverse interpretation in absence of a favourable decision. Penalty cannot be imposed when an assessee has taken a legal stand, unless the assessee has not disclosed facts before the department/authority and is unable to establish his bona fides on legal interpretations putforward.

16. In *Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts Pvt. Ltd;* [2010] 322 ITR 158 (SC) it was observed as under:

“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. The present is not a case of concealment of the income. That is not the case of the Revenue either. However, the

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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 item 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 CIT v. 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

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decision of this court in Union of India v. Dharamendra Textile Processors; [2008] 13 SCC 369 as also, the decision in Union of India v. Rajasthan Spt. & Wvg. Mills [2009] 13 SCC 448 and reiterated in paragraph 13 that:

"13. It goes without saying that for applicability of section 271(1)(c), conditions stated therein must exist.

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. Shroff v. Joint 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) (c) 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,

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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 Assessing Officer 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 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 v. Joint CIT was upset. In Union of India v. Dharamendra Textile Processors, 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 the 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 v. Joint CIT was overruled by this court in Union of India v. Dharamendra Textile Processors, was that

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according to this court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in the case of Union of India v. Dharamendra Textile Processors², no fault was found with the reasoning in the decision in Dilip N. Shroff v. Joint CIT, where the court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff v. Joint CIT 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 v. Joint CIT was overruled.

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, 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

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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.

17. In view of the aforesaid discussion, we are satisfied that this is a fit case wherein the explanation offered by the assessee establishes and proves his bona fides. The same should be accepted especially when he had filed a detailed note and had also paid tax and had asked for refund of tax. The question of law is accordingly, answered in favour of the appellant and against the revenue. Penalty under Section 271 (1) (c) is directed to be deleted.

18. Appeal is disposed of with no orders as to costs.

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SANJIV KHANNA, J

Sanjeev Sachdeva

SANJEEV SACHDEVA, J

OCTOBER 07, 2013/sv