IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 300 of 2019
Date of decision: 10.2.2020

Principal Commissioner of Income Tax, Faridabad

.. Appellant

v.

M/s Piyush Colonizers Ltd.

.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tajender K. Joshi, Senior Panel Counsel with
Mr. Vikram Bali, Junior Panel Counsel for the appellant.

...

AVNEESH JHINGAN, J.

The revenue is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 28.12.2018 passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') claiming following substantial questions of law:

"(i) On the facts and in the circumstances of the case the Ld. CIT (A) and the Ld. ITAT have erred on facts and in law in deleting the penalty of Rs. 1,26,39,400/- levied by the Assessing Officer u/s 271(1)(c) of the Act without properly appreciating the facts of the case and without specifying what was wrong with Assessing Officer's order as of why penalty was not leviable in this case?

(ii) Ld. CIT (A) and Ld. ITAT has erred on facts and in the law in deleting the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 without appreciating the fact that addition made by AO was confirmed to the extent of Rs.1,85,92,817/- and the assessee's intention was to withhold true particulars of income?

(iii)On the facts and in the circumstances of the case the Ld. CIT (A) and the Ld. ITAT have erred on facts and in the law in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act disregarding the facts that the penalty is leviable on contravention of the provisions of a civil statute like Income Tax Act, there being so many judgments that breach of a civil obligation attracts levy of penalty whether the contravention was made by the defaulters with any guilty intentions or not?

(iv) On the facts and in the circumstances of the case the Ld. CIT (A) and the Ld. ITAT have erred on facts and in the law in deleting the penalty especially without appreciating the facts that assessee deliberately filed inaccurate particulars of income so as to reduce its tax liability?"

The relevant facts are that the assessment year involved is 2008-09. A search and seizure was conducted at the administrative office of Piyush Group of Companies and the residential premises of the Director were also searched on 16.1.2008. The proceedings concluded vide order dated 29.12.2009 by disallowing claim of indirect expenses thereby making an addition of ₹9,56,65,810/-. In appeal, the 1st Appellate Authority quashed the disallowance of ₹7,70,72,993/- and addition was restricted to ₹1,85,92,817/-. For the addition sustained, penalty proceedings were initiated under Section 271(1)(c) of the Act and penalty of ₹1,26,39,400/- was imposed vide order dated 30.3.2012. The 1st Appellate Authority set aside the penalty vide order dated 31.3.2015. The appeal filed by the revenue was dismissed by the Tribunal, hence the present appeal.

Learned counsel for the revenue argued that the 1st Appellate Authority erred in setting aside the penalty, the partial addition was sustained and hence the penalty qua the same was leviable.

The contention raised lacks merit.

Section 271(1)(c) of the Act is reproduced below:

> "**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 --
>
> xx xx xx
>
> (c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or
>
> xx xx xx"

There is no dispute on the fact that during the relevant assessment year, the assessee changed the accounting method from project completion to percentage method. It was the result of change of method that certain indirect expenses claimed could not be allowed. The account books of the assessee were found to be duly audited and prepared in accordance with accepted accounting standard. The change of accounting method was also duly disclosed by the auditor. It was not the case of the revenue even before the Appellate Authority that the assessee had suppressed any material fact.

At the highest, the case of the revenue was that even though the material was disclosed by the assessee but he had claimed certain inadmissible expenses. Claiming of an expense which is not sustainable in itself cannot be a ground for invoking Section 271(1)(c) of the Act. In order to impose penalty under the said section, either there has to be concealed particulars of the income or furnishing of inaccurate particulars of the income. Rejection of a claim that too where in the facts of the present case it was result of change of accounting method is not sufficient for penalising the assessee.

The Supreme Court in **C.I.T. Ahmedabad v. Reliance Petroproducts, 2010 (322) ITR 158** dealt with Section 271(1)(c) of the Act and held as under:

> "7. ....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 lain 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 ***Commissioner of Income Tax, Delhi Vs. 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 India Vs. Dharamendra Textile Processors [2008(13) SCC 369]***, as also, the decision in ***Union of India Vs.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."

xx xx xx

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."

In view of the facts of the case and considering the Apex Court decision, no interference is warranted in deletion of penalty.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

10.2.2020
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No