

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI C BENCH, MUMBAI**

**Before Shri D K Agarwal (Judicial Member), and
Shri Pramod Kumar (Accountant Member).**

ITA No. 1548/Mum/06
Assessment year 1999-2000

Equest India Private Limited***Appellant***
75-77, Park House Annexe
Woodhouse Road, Colaba,
Mumbai 400 005(PAN : AAACE2414P)

Vs.

Income Tax Officer
- Ward 3(1)(3), Mumbai ***Respondent***

Appellant by : Shri Vijay Mehta
Respondent by : Shri Virendra Ojha

O R D E R

Per Pramod Kumar:

1. The short issue that we are required to adjudicate in this appeal is whether or not the CIT(A) was justified in upholding the penalty of Rs 6,39,040 imposed on the assessee under section 271(1)(c) of the Income Tax Act, 1961. The assessment year involved is 1999-2000.

2. The issue in appeal lies in a very narrow compass of facts. The assessee is a company engaged in the business of, inter alia, investment,

horse breeding, and horse racing. In the course of assessment proceedings, the Assessing Officer noted that the assessee has incurred certain expenses for maintaining horse races for running in horse races. These expenses were quantified at Rs 56,44,906, though in appeal the quantum of these expenses was reduced to Rs 18,25,828. The Assessing Officer further observed that, in terms of provisions of Section 74 A of the Income Tax Act, the expenses so incurred on maintenance of race horses could only be set off against gains from race horses. On this basis, the expenses were disallowed in computation of business profits, though carried forward to be set off against gains, if any, from horse racing in ensuing assessment years. This stand has also been confirmed by a coordinate bench of this Tribunal, vide order dated 27th March 2007. It is in connection with this disallowance that the Assessing Officer also imposed penalty under section 271(1)(c) for, what he termed as, concealment of particulars of income. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. A plain reading of the Tribunal's order in the quantum proceedings would show that the stand of the Assessing Officer has been confirmed on the ground that the "business activity of the assessee is to own and maintain the race horses, since dominant purpose of all his activities is to acquire and maintain the race horses" and that "the activity of leasing mares for breeding, entering into lease options and all other activities are wholly incidental to the main activity of owning and maintaining the race horses". As to whether the dominant purpose of all the activities is to own and maintain race horses or not is essentially a subjective area, and the perceptions may differ. Merely because the assessee has a different perception of the situation than the Assessing Officer, even though, in the ultimate analysis, the stand of the Assessing Officer is to be upheld, it cannot be said that the assessee has concealed any particulars. The expression 'furnishing of inaccurate particulars of income' has also not been defined in the Act. The expression 'inaccurate' refers to 'not in conformity with the fact or truth' and that is the meaning which, in our considered view, is relevant in the context of 'furnishing of inaccurate particulars'. The expression 'particulars' refers to 'facts, details, specifics, or information about someone or something'. Therefore, the plain meaning of the expression 'furnishing of inaccurate particulars of income' implies furnishing of details or information about income which are not in conformity with the facts or truth. The details or information

about income deal with the factual details of income and this cannot be extended to areas which are subjective such as the status of taxability of an income, admissibility of a deduction and interpretation of law. The furnishing of inaccurate information thus relates to furnishing of factually correct details and information about income. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. The authorities below have apparently proceeded to treat assessee's making an incorrect claim of income as furnishing of inaccurate particulars. What is a correct claim and what is an incorrect claim is a matter of opinion. In our considered view, raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount of furnishing of inaccurate particulars of income. 'Inaccurate', as we have noted above, is something factually incorrect and interpretation of law can never be a factual aspect. The development of law is a dynamic process which is affected by the innumerable factors, and it is always an ongoing exercise. In such circumstances, a bonafide legal claim by the assessee being visited with penal consequences only because it has not been accepted thus far by the tax authorities or judicial authorities is an absurdity. In any event, as we have noted above, the connotations of expression 'particulars of income' do not extend to the issues of interpretation of law and as such making a claim, which is found to be unacceptable in law, cannot be treated as furnishing of inaccurate

particulars of income. In this view of the matter, the case of the assessee can not be said to be a case of 'furnishing of inaccurate particulars of income', in its natural sense, either. This school of thought has now been confirmed by the Hon'ble Supreme Court, in the case of Reliance Petrochem Limited Vs CIT (322 ITR 158) wherein Their Lordships were concerned with the question whether "in this case, as a matter of fact, the assessee has given inaccurate particulars", as has been the question in the present case, and it is in this context that Their Lordships noted 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" and add that "such being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act" and that "a mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of the assessee". The situation that we are dealing with is materially similar inasmuch the penalty has been imposed only for concealment of particulars and it has not been the case of the revenue at any stage that any factual particulars furnished by the assessee are false. The penalty has been imposed because of legal inadmissibility of the claim of deduction, which is rejected on the grounds of application of Section 74 A of the Act. In view of these discussions, as also bearing in mind entirety of the case, we are of the considered view that it was indeed not a fit case for imposition of penalty under section 271(1)(c) of

the Act. We, therefore, direct the Assessing Officer to delete the impugned penalty.

5. In the result, the appeal is allowed. Pronounced in the open court today on 25th day of June, 2010.

Sd/xx
(D K Agarwal)
Judicial Member
Mumbai; 25th day of May, 2010.

Sd/xx
(Prمود Kumar)
Accountant Member

Copy forwarded to :

1. *The applicant*
2. *The respondent*
3. *CIT, , Mumbai*
4. *Commissioner (Appeals) , Mumbai*
5. *Departmental Representative, C bench, ITAT, Mumbai*
6. *Guard File*

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By Order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai

