

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I' NEW DELHI)

BEFORE SMT. DIVA SNGH, JUDICIAL MEMBER  
AND  
SHRI B.K. HALDAR, ACCOUNTANT MEMBER

I.T.A. No.813/Del/2011  
Assessment year : 2007-08

DCIT,  
Circle-4 (1),  
New Delhi.

V.

M/s Japfa Comfeed India  
Pvt. Ltd., 306-Corporate Tower,  
85-A, Zamrudpur, GK Part-I,  
New Delhi.

(Appellant)

(Respondent)

**PAN /GIR/No.AAACJ-1855-B**

Appellant by : Shri Kishore B. Sr. DR.  
Respondent by : Shri Dalip Kaul, C.A.

ORDER

PER B.K. HALDAR, AM:

This is an appeal filed by the revenue against the order of Ld CIT(A)-VII, New Delhi dated 3.12.2010 for assessment year 2007-08 wherein Ld CIT(A) has cancelled penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961. The revenue has taken following grounds of appeals:-

1. The order of the Ld CIT(A) is erroneous and contrary to facts and law.
2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the penalty of ₹.2,44,221/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961.

3. The Ld CIT(A) has ignored the fact that the assessee furnished inaccurate particulars of its income by claiming non allowable expenses on account of increase of share capital and by under valuing the sale price of plot of land sold.
4. The appellant craves leave to add, or amend and alter any grounds of the appeal raised above at the time of hearing.

2. The assessee furnished return of income declaring total loss of ₹.7,67,68,423/- on 31.10.2007. The same was processed u/s 143(1) on 25.2.2009 and subsequently taken under scrutiny. During the assessment proceedings,, it was noted by the Assessing Officer that the assessee sold land at Pune for a consideration of ₹.18 lakhs and accordingly worked out long term capital loss on sale of such property. However, the valuation of the land was adopted by stamp valuation authority at ₹.20 lakhs. The assessee was, therefore, asked to show cause as to why the capital loss on sale of the said property should not be worked out as per the provisions of section 50C of the Act. In response, the assessee filed a revised computation of capital gains in accordance with section 50C of the Act. The Assessing Officer was also satisfied that penalty proceedings u/s 271(1)( c) of the Act is required to be initiated as the assessee has furnished inaccurate particulars of income with reference to the above.

3. Similarly, it was noted by the Assessing Officer that the expenses relating to increase in authorized share capital were amortised during the year as deferred revenue expenditure. The assessee was asked to show cause as to why the same should not be disallowed as the amount was not allowable in view of the Hon'ble Apex Court's judgment in the case of Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798 and Hon'ble Delhi High Court's judgment in the case of CIT v.

Hindustan Insecticides Ltd. (2001) 250 ITR 338. It was contended by the assessee vide its letter dated 30.11.2009 that the funds raised by increasing in authorized share capital were used for expansion of business and hence the claim was allowable u/s 35D(ii) of the Act. The above claim of the assessee was not accepted by the Assessing Officer in view of the judgments cited above and an amount of ₹.5,25,554/- was disallowed by the Assessing Officer on this account. He also initiated penalty proceedings u/s 271(1)(c) of the Act with reference to the above.

4. During the penalty proceedings u/s 271(1)(c) in its reply dated 14.5.2010 the assessee requested the Assessing Officer to drop the said penalty proceedings by contending that the omissions were bona fide in nature and therefore penalty u/s 271(1)(c) of the Act was not exigible. The Assessing Officer did not accept the above contention of the assessee as according to him the assessee was required in the first stage not to claim such expenses and was also required to work out capital gains as per the provisions of the Act. As the above was done only after the same was pointed out by the Assessing Officer, it was held that the assessee was liable to penalty u/s 271(1)(c) of the Act. He, therefore, Imposed minimum penalty of ₹.2,44,221/- being 100% of tax sought to be evaded.

5. Aggrieved the assessee filed the appeal before the Id CIT(A)

6. The submissions of the assessee before Ld CIT(A) were as under:-

“During the appellate proceedings it was submitted on behalf of the appellant, inter alia, that

"During the course of assessment proceedings assessee has submitted computation of income as desired by DCIT wherein the unintentional mistake of Rs. 200000/- being the lesser consideration received by the assessee and shown in computation of capital gains was rectified / explained. It is pertinent to mention that assessee has in fact received Rs. 18.00 lacs only against the circle rate of Rs. 20.00 lacs. On perusal of computation of income read with assessment Order, it is evident that the intention of the assessee was not mala fide and mere omission to claim capital loss at Rs. 607926/- instead of Rs. 407926/-(as assessed by AO) was an inadvertent / unintentional. Learned DCIT assessed the losses for the year at Rs. 76242869/- based on the rectified computation of income filed. Keeping in view the quantum of losses for the year and existing brought forward losses, it cannot be concluded that the assessee has concealed income or filed inaccurate particulars of income for a nominal amount of Rs. 2.00 Lacs. It is pertinent to mention that the assessee has also failed to claim brokerage paid on the said deal amount to Rs. 60000/-.

Mere omission to compute capital gains on circle rate does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid imposition of tax thereon. Your kind attention is invited to Apex court judgment in the case of K C Builders vs. CIT (2004) 135 Taxman 461 (SC) wherein it was held, that a penalty

may be imposed if the assessee has consciously made the concealment or furnished inaccurate particulars of income. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi as held in T. Ashok Pai vs. CIT 2007 210 CTR (SC) 228. It has also been held in Dilip N Shroff vs CIT 2007 161 Taxman 221 (SC) that the penalty can be imposed if the entirety of circumstances reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of income or had furnished inaccurate particulars thereof In this case also entirety of circumstances suggests that the assessee had not consciously concealed the particulars of income. It was merely an omission which was accordingly rectified / submitted during the course of assessment proceedings. Ld. DCIT has also completed the assessment and determined the losses on the rectified computation of income submitted during the assessment proceedings as is evident from assessment order dated 21.12.2009.

It has also been held in various courts that in the course of levy of penalty, there should always be Mens rea which means evil intention or knowledge of wrongfulness of the act that a person commits. The intention of the legislature to levy penalty under section 271 (l)(c) is that the assessee is not to be penalized unless the necessary mental element could be spelt out in his act from the material on record that the act has been committed with evil intention. The deletion of word "Deliberately" from the text of section 271 (l )(c) of the finance act 1964 does not seem to alter the law on the point as still the expression concealment would require the mental element to be established. In other

words for levy of penalty there should always be Mens rea. In this case also the assessee has not concealed the particulars of income with any evil intention or having knowledge of wrongfulness of the act. It was merely an omission which was accordingly rectified / submitted during the course of assessment proceedings. Similarly Ld. DCIT has levied penalty on disallowance u/s 35D as per para 5 and 6 of the assessment order dated 21.12.2009. It is pertinent to mention that while initiating penalty u/s 271 (l)(c) vide para 08 of assessment order date 21.12.2009 no mention of initiation of penalty has been made on para 5 and 6 of the order. The disallowance u/s 35D of the Income Tax Act has been made by invoking Delhi High Court judgment in the case of CIT vs. Hindustan Insecticides Ltd. 250 ITR 338 (2001). In order to attract penalty provisions of 271 (l)(c), there has to be concealment of income or furnishing of inaccurate particulars of income by the assessee. In the instant case assessee claimed deduction on account of expenditure incurred on increase in authorized share capital of the company for the purpose of infusion of more capital for business expansion. No information pertaining to this expenditure was found to be incorrect or inaccurate. The assessee cannot be held guilty of furnishing inaccurate particulars. Ld. DCIT has disallowed the said expenditure in view of the Delhi high court judgment in the case of CIT vs. Hindustan insecticides Ltd. The disallowance has been made merely on the interpretation of above judgment. Even if the assessee has made an incorrect claim in law, it cannot tantamount to furnishing of inaccurate particulars. Merely because the assessee claimed deduction which has not been accepted by the revenue, penalty provisions u/s 271 (l)(c) of Income Tax Act, 1961 cannot be initiated.

Your kind attention is invited to recent Supreme Court judgment in the case of CIT vs. Reliance Petro Products Ltd. (2010) 230 CTR (SC) 320. It has been held that merely because assessee claimed deduction of expenditure which has not been accepted by the revenue, penalty under section 271 (l)(c) is not attracted; mere making of the claim, which is not sustainable in the law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by AD for any reason, the assessee would attract penalty u/s 271 (l)(c). That is clearly not the intention of Legislature. It is further submitted that the assessee is an honest tax payer and has been cooperating in assessment proceeding for the last several years. There are no adverse comments or reports against the assessee. Assessee being very honest has not even contested these disallowances at any appellate forum.

Keeping in view the above facts, circumstances, judicial pronouncements and track record of the assessee levy of penalty under section 271 (l)(c) of Income Tax Act, 1961 would be unjust and uncalled for. Assessee is a multinational company and any levy of penalty under these circumstances will shake the faith and confidence of the assessee in the Indian judicial system. It is prayed that the penalty levied by Learned DCIT under section 271 (l)(c) of Income Tax Act, 1961 may kindly be deleted in 'toto

6. Ld CIT(A) after considering the facts and circumstances of the case held as under:-

“5.1. In the instant case, the assessee had not furnished the inaccurate particulars of his income when it furnished the return. There is only difference of opinion on the relevant issues. Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Ajaib Singh & Co. [2002] 253 ITR 630 have observed that merely because of certain expenses claimed by the assessee are disallowed by an authority, it cannot mean that particulars furnished by the assessee were wrong. It was held that mere disallowance of expenses per se cannot mean that assessee has furnished inaccurate particulars of its income. It is repeatedly held by the Courts that the penalty on the ground of concealment of particulars or non-disclosure of full particulars can be levied only when in the accounts/return an item has been suppressed dishonestly or the item has been claimed fraudulently or a bogus claim has been made. When the facts are clearly disclosed in the return of income, penalty cannot be levied and merely because an amount is not allowed or taxed to income, as it cannot be said that the assessee had filed inaccurate particulars or concealed any income chargeable to tax. Further, conscious concealment is necessary. Even if some deduction or benefit is claimed by the assessee wrongly but bona fide and no mala fide can be attributed, the penalty would not be levied. Reliance is also placed on the judgment of the Supreme court in the case of CIT vs. Reliance Petroproducts P . Ltd.(2010) 322 ITR 158.

5.2. From the discussion made above, it can be concluded that mere disallowance or addition will not be sufficient for levy of



penalty u/s 271 (l)( c). In view of the above and taking into consideration the facts (a) that the appellant had disclosed all material facts and (b) raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income, I hold that there is no case of concealment or furnishing of inaccurate particulars of its income in respect of the disallowances made on account of (a) capital gains amounting to Rs.2,00,000/- and (b) Disallowance of Rs. 5,25,554/- claimed by the assessee as deferred revenue expenditure under section 35D of the Act. Therefore, it is held that A.O. was not justified in imposing penalty u/s 271(1)(c) amounting to Rs. 2,44,221/-. Accordingly, the same is cancelled.”

7. Aggrieved revenue has filed the appeal before the Tribunal.
8. Before us, Ld DR contended that the claim of the assessee u/s 35D of the Act was patently a wrong claim in view of the decisions cited by the Assessing Officer. In such circumstances, penalty u/s 271(1)(c ) is leviable. In support of the above proposition, he relied on the decision of the jurisdictional High Court in the case of CIT v. Escort Finance Ltd. reported in 328 ITR 44.
9. It was further contended by him that the Hon'ble Apex Court's judgment in the case of Reliance Petroproducts Ltd. (supra) is distinguishable in the facts of the present case. In the said case all particulars of income were available and there was no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. The issue involved was debatable and therefore it was held by the Apex Court that no penalty u/s 271(1) ( c)

was exigible in that case. The facts of the present case are not the same. It was, therefore, contended that levy of penalty u/s 271(1)(c) may please be upheld.

10. In the rejoinder, it was submitted by the Ld AR for the assessee that the revised computation filed by the assessee which is available in assessee's paper book page 11 was accepted by the Assessing Officer and therefore no penalty u/s 271(1)(c) was exigible. It was also contended that there was no intention on the part of the assessee to claim excess capital loss as even otherwise there was huge loss incurred by the assessee. The ratio laid down by the Hon'ble Apex Court in Reliance Petroproducts Ltd., was applicable in the facts of the present case. He also relied on the order of the Ld CIT(A).

11. We have heard the parties and perused the record. In the present case, the revenue has not brought on record any evidence to show that relevant particulars required for computation of capital gain/loss or for computation of deduction u/s 35D were wrongly furnished by the assessee. It is not the case of the revenue that the copy of sale deed of the impugned property was not accompanied along with the return of income or that in the claim made u/s 35D of the Act, it was not mentioned by the assessee that expenses incurred for increasing in the share capital of the company was included therein. The Hon'ble jurisdictional High Court's judgment in the case of CIT v. Escorts Finance Ltd. (supra) thus support the case of the revenue wherein the jurisdictional High Court has opined that even if there was no concealment of income or furnishing of inaccurate particulars but on the basis thereof the claim which was made was ex facie bogus, it could attract penalty provision. The Hon'ble Court was also deciding levability of penalty u/s 271(1)(c) of the Act in case of a claim u/s 35D of the Act. According to the Hon'ble High Court in the case of false claim made by the assessee penalty u/s 271(1)(c) of the

Act could be attracted and not when merely a wrong claim is made by the assessee. This judgment of Hon'ble jurisdictional High Court was passed on 24<sup>th</sup> day of August, 2009.

12. We are, therefore, now required to look into the aspect as to whether the Hon'ble Apex Court's judgment in the case of Reliance Petro Products Pvt. Ltd. (supra) which was delivered on 17.3.2010, could be considered to have over-ruled the above judgment of the Hon'ble jurisdictional High Court. In the said judgment the Hon'ble Apex Court has explained the nature of the provision of section 271(1) (c) as well as defined one of the most important expression used in the said section namely "inaccurate particulars". The ambit of the provision as explained by the Hon'ble Apex Court in the said judgment has universal application irrespective of the other facts obtained in a particular case. It has been clearly held by the Hon'ble Apex Court that the provision of section 271(1)(c) lays down a "strict liability" i.e. to say that unless all the conditions mentioned in the said section are fulfilled, no penalty u/s 271(1)(c) of the Act would be exigible. In this context, the expression "inaccurate particulars" has been explained by the Hon'ble Apex Court. By noticing that the meaning of the word "particular" is a detail or details (in plural sense), the detail of a claim, or the separate items of an account, the Hon'ble Apex Court held that submitting an incorrect claim in law for a particular expenditure cannot be construed as furnishing of inaccurate particulars of such income. The Hon'ble Court also noted the meaning of the word "inaccurate" which is as under:-

"Not accurate, not exact, or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcription"

13. Leading the words "particulars" and "inaccurate" in conjunction, it was held by the Hon'ble Court that the expression furnishing of inaccurate particulars of income would mean that the details supplied

in the return were not accurate, not exact or correct, not according to truth or erroneous. If the details supplied by the assessee were not incorrect or erroneous or false but the assessee merely made a claim which was not sustainable in law the same would not amount to furnishing of inaccurate particulars regarding the income of the assessee.

14. The above observation of the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) have universal application and would thus nullify the judgment of the Hon'ble jurisdictional High Court in the case of Escorts Finance Ltd. (supra). In the present case, it has not been shown by the revenue that the assessee furnished "inaccurate particulars of income", the meaning of which has been explained by the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (supra). In this view of the matter, we have no hesitation in holding that in the facts of the present case, the ratio laid down by the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) is squarely applicable and no penalty u/s 271(1)(C) of the Act is exigible. We, therefore, uphold the order of the Id CIT(A) and dismiss the appeal filed by the revenue.

15. In the result, the appeal filed by the revenue is dismissed.

16. Order pronounced in the open court on the 30<sup>th</sup> day of June, 2011.

Sd/-

(DIVA SINGH)  
JUDICIAL MEMBER  
Dt. 30.6.2011.

HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.

Sd/-

(B.K. HALDAR)  
ACCOUNTANT MEMBER

5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.  
True copy.

(ITAT, New Delhi).

Date of hearing	29.6.2011
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Date of Dictation	29.6.2011
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Date of order signed by the Hon'ble" Member.	29.6.2011
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Date of order Sent to the concerned Bench	30.6.2011
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