

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

ITA No.523/Lkw/2016
Assessment year:2012-13

M/s Agrahari Builders Pvt. Ltd., 128/594, K Block, Kidwai Nagar, Kanpur. PAN:AABCA 2228A	Vs.	Dy.C.I.T., Range-VI, Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Ashish Jaiswal, Advocate
Respondent by	Shri Ajay Kumar, D. R.
Date of hearing	08/01/2018
Date of pronouncement	11/01/2018

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of CIT(A) dated 26/07/2016.

2. The only grievance raised by the assessee is the action of learned CIT(A) by which he has confirmed the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act.

3. Learned A. R. submitted that the Assessing Officer has imposed penalty u/s 271(1)(c) of the Act on account of disallowance of depreciation amounting to Rs.2,57,677/- on the ground that no business income was earned during the year under assessment. In this respect it was submitted that though the assessee did not contest the addition but levy of penalty u/s

271(1)(c) was not warranted as the assessee had filed complete details including particulars of assets on which depreciation was claimed. It was submitted that though the assessee had rightly claimed the depreciation but even if the claim was wrong, every wrong claim by the assessee cannot tantamount to furnishing of inaccurate particulars of income or concealment of income. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322 (SC).

4. Learned D. R., on the other hand, heavily placed reliance on the orders of the authorities below.

5. We have heard the rival parties and have gone through the material placed on record. We find from the copy of balance sheet and profit & loss account placed at pages 1 to 3 of the paper book that assessee had filed complete particulars with respect to assets on which depreciation was claimed. The assessee has also filed chart of fixed assets placed at page No. 3 of the paper book showing claim of the said depreciation. From the above documents itself, the Assessing Officer has observed that the assessee has claimed depreciation to the extent of Rs.2,57,677/- and therefore, it cannot be said that the assessee had concealed income or had furnished wrong particulars of income. Even if it is presumed that assessee was not eligible for allowance of depreciation even then the penalty u/s 271(1)(c) cannot be imposed as held by Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. (supra) wherein Hon'ble Supreme Court has held that every wrong claim made by the assessee cannot tantamount to furnishing of wrong particulars of income or concealment of income. The Hon'ble Supreme Court has held as under:

"A glance of provision of section 271(1)(c) 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 instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot 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 of inaccurate particulars. [Para 7]

Therefore, it must be shown that the conditions under section 271(1)(c) 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. [Para 8]

The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was 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)(s). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]

The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was 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. Such contention could not be accepted 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 attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10]

Therefore, the appeal filed by the revenue had no merits and was to be dismissed."

5.1 Following the above judicial pronouncement, we set aside the order of CIT(A) and allow the appeal filed by the assessee.

6. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 11/01/2018)

Sd/.
(PARTHA SARATHI CHAUDHURY)
Judicial Member

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:11/01/2018

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar