

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

**BEFORE SHRI C.N. PRASAD, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.5216/Mum/2018  
(Assessment Year : 2011-12)**

M/s. Omega Corrugators Pvt. Ltd., Gala No.1, Building No.2 Shivalay Industrial Estate Chinchpada, Gokhiware Vasai Road (East) Dist: Thane Maharashtra – 401 208	Vs.	The Income Tax Officer, Ward No.4(3), Thane Asher IT Park, A-Wing Room No.14, Wagle Industrial Estate Thane (West) – 400 064
<b>PAN/GIR No. AAACO6250D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Lalchand Choudhary
Revenue by	Shri Kumar Padmapani Bora
<b>Date of Hearing</b>	<b>05/02/2020</b>
<b>Date of Pronouncement</b>	<b>14/02/2020</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.5216/Mum/2018 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.10027-THN/17-18 dated 04/07/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The only effective issue involved in this appeal is validity of levy of penalty u/s.271(1)(c) of the Act in the sum of Rs.1,07,262/- in respect of

disallowance made towards loss of sale of motor car amounting to Rs.3,57,541/-.

3. We have heard rival submissions and perused the materials available on record. We find that assessee has debited a sum of Rs.3,57,541/- towards loss on sale of motor car in its profit and loss account but omitted to disallow the same while computing the total income from business. The Id. AO during the course of assessment proceedings on verification of depreciation chart observed that motor car is forming part of block of assets under the head plant and machinery and the assessee had reduced the value of assets sold during the year from the block of assets and claimed depreciation on balance value of block of assets under the head plant & machinery. Since this was genuine omission made by the assessee while filing return of income, when this was pointed out by the Id. AO at the time of assessment proceedings, assessee immediately agreed for disallowance of the same in the assessment. We find that the assessee had duly furnished the entire workings for loss of sale of motor car before the Id.AO voluntarily together with copy of purchase and sale invoice thereon. We find that the Id. AO had disallowed the sum of Rs.3,57,541/- towards loss on sale of motor car in the assessment and levied penalty proceedings u/s.271(1)(c) of the Act vide order dated 29/06/2016. Before the Id. CIT(A), the assessee submitted that it was a genuine omission on the part of the assessee and the entire details for making the addition / disallowance was very much available in the return of income filed by the assessee together with the audited statement of accounts wherein this sum of Rs.3,57,541/- was clearly and separately mentioned in the P & L Account as loss on sale of fixed assets. The assessee also submitted that the entire tax payment pursuant to the said disallowance made in the assessment had been duly paid by it and the genuine omission made by it should not be penalised.

The assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd. vs. CIT reported in 348 ITR 306 in support of his contention. The Id. CIT(A) however, ignored the contentions of the assessee and held that the mistake committed by the assessee was not bonafide and accordingly confirmed the levy of penalty in the sum of Rs.1,07,262/-.

4. Aggrieved the assessee is in appeal before us.

5. We find that the fact stated hereinabove remain undisputed. We find that the issue in dispute is squarely covered by the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd., in 348 ITR 306 supra wherein the relevant operative portion of the said judgement are reproduced herein:-

*18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.*

*19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*

*20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.*

*21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside. No costs.*

5.1. Respectfully following the aforesaid decision, we hold that this is not a fit case for levy of penalty u/s.271(1)(c) of the Act. Accordingly, we direct the Id. AO to delete the penalty levied u/s.271(1)(c) of the Act.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 14/02/2020

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Mumbai; Dated  
KARUNA, *sr.ps*

14/02/2020

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai