

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.347/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Core Metal Krafts Ltd., SCO 36, Sector 26, Chandigarh.	बनाम	The Assistant Commissioner of Income Tax, Circle 5(1), Chandigarh.
स्थायी लेखा सं./PAN NO: AAFFC0194A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 25.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10.2021

(Hearing through webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Chandigarh [(in short the ‘Ld. CIT(A)] dated 10.01.2018 relating to assessment year 2013-14, passed u/s 250(6) of the of the Income Tax Act, 1961 (hereinafter

referred to as 'Act'), confirming the levy of penalty u/s 271(1)(c) of the Act.

Earlier the appeal of the assessee was dismissed for non prosecution by the Tribunal vide order dated 11.06.2018 and the same was recalled thereafter vide order dated 03.01.2020 passed in MA No.190/Chd/2018. Hence, the present appeal before us.

2. The grounds raised by the assessee read as under:

- “1. *The Ld. Assessing Officer's and Worthy CIT (A)'s orders are contrary to law and facts of the case.*
2. *The Ld. Assessing Officer's and Worthy CIT (A)'s he Ld. AO grossly erred in imposing penalty u/s 271(l)(c) of the IT Act, 1961 on the addition of Rs.4,79,9867- by invoking the provisions of section 43B of the Act. The non adding back of bonus of Rs 2,31,778/- was completely a clerical error by the accountant of the assessee and no penalty can be made on the same as he same was clearly reported in the tax audit report (Form 3 CD) of assessee. The same issue was also discussed in the case of price Waterhouse coppers Vs. CST SC and decided in favour of assessee. Further the addition of Ex-gratia of Rs 2,48,208/- falls under purview of Employee benefit expenses and cannot be regarded as an item falling under section 43B of the Act. OL4.*
3. *The Ld AO and Worthy CIT (A) grossly erred in imposing penalty u/s 271(l)(c) of the IT Act, 1961 on the addition of Rs 7,4777- on account of interest on TDS income tax and penalty paid. The amount was completely compensatory in nature and not penal. The same was offered for taxation to avoid litigation and buy peace of mind subject to no penalty.*
4. *The Ld AO and Worthy CIT (A) grossly erred in imposing penalty u7s 271(1) (c) of the Income Tax Act 1961 on the addition of Rs 40,057/- on account of difference in the*

reconciliation of income as per books and form 26AS. The same was mistakenly skipped due as interest was accrued at the end of financial year. The assessee himself offered the same for taxation to avoid litigation subject to no penalty.

5. *The Ld AO and Worthy CIT (A) grossly erred in imposing penalty u/s 271(1) (c) of the IT Act, 1961 on the addition of Rs. 10,431/- on account of disallowance ESI penalty. The disallowance of ESI penalty does not warrant invocation of any penalty as it does not amount to inaccurate particulars. The amount was compensatory in nature and not for any infringement of law. The same was agreed addition subject to no penalty.*
6. *The Ld. AO and Worthy CIT (A) grossly erred in imposing penalty u/s271(1) (c) of the Income Tax Act, 1961 on the addition of Rs. 21,852/- on account of interest on refund not disclosed. The same was due to an oversight/bonafide mistake and was offered for taxation immediately without any delay.*
7. *The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.”*

3. It transpires from the grounds raised above that the assessee is agitating levy of penalty u/s 271(1)(c) of the Act for concealment/furnishing of inaccurate particulars relating to the following:

1)	Bonus and exgratia remaining unpaid by the prescribed dated as per section 43B of the Act	=Rs.4,79,986/- (2,31,778+2,48,208)
2)	Interest on TDS, Income Tax Penalty paid	= 7,477/-
3)	Difference in reconciliation income As per bonus and Form 26AS	= 40,057/-
4)	ESI penalty	= 10,431/-
5)	Interest on refund not returned As income	= 21,852/-

4. The arguments of the Ld.Counsel for the assessee against the levy of penalty for the aforesaid was that all particulars relating to the above had been duly disclosed and it was not a case of furnishing of inaccurate particulars or concealment of income. That the disallowance made u/s 43B of the Act had been suffered on account of invocation of specific provisions of the Act. That additions relating to difference in interest income reported in Form 26AS and that disclosed by the assessee was a bonafide mistake on the part of the assessee since Form 16A had not been received from the department. That interest on income tax refund had not been returned due to inadvertent error having wrongly calculated the interest. And when becoming aware of the same during assessment proceedings the assessee had duly surrendered both the incomes before the AO. Ld.Counsel for the assessee contended that the bonafides of the assessee are further established by the fact that it had returned huge losses, both current and brought forward, and these minor additions would not have resulted in any tax effect. A number of case laws were relied upon in support of his contention, more particularly the following:

- i) CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 for the proposition that all particulars having been duly disclosed a mere discussion would not attract levy of penalty;
- ii) CIT Vs National Institute of Technical Teacher Training & Research (2014) 50 Taxman.com 107 (P&H) for the proposition that particulars of income having been furnished, disallowance having been made of a specific provision of the Act i.e. section 43B of the Act disallowing the amount remaining unpaid by specific due date would not attract penalty;
- iii) Pr.CIT Vs. Torque Pharmaceutical Pvt. Ltd. (2017) 81 Taxman.com 283 (P&H);
- iv) CIT Vs. Balkishan Dhawan HUF (2013) 40 Taxman.com 208 (P&H) for the proposition that merely because the assessee's claim for expenditure was not accepted, penalty u/s 271(1)(c) of the Act could not be levied;
- v) Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (2012) 25 Taxman.com (SC) for the proposition that a bonafide inadvertent error on the part of the assessee would not attract levy of penalty.

A gist of submissions in writing dated 28.01.2020 was filed by the Ld.Counsel for the assessee before us.

5. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(A) contending that the excuse of error cannot

come to the rescue of the assessee as it was its responsibility to ensure no wrong claims were made in the return and concealment having been detected by the AO, any surrender thereafter could not save the assessee from the levy of penalty.

6. We have heard both the parties. In the present case penalty u/s 271(1)(c) of the Act has been levied for furnishing of inaccurate particulars of income/concealment of particulars of income and the explanation to section 271(1)(c) states that where in respect of any facts material to the computation of income the assessee does not offer an explanation or offers a false explanation or offers an explanation which is unable to substantiate and prove that it is bonafide, then the amount added or disallowed in computing the total income as a result thereof shall be deemed to represent the income in respect of particulars have been concealed.

7. Having said so, this section has been the subject to interpretation by higher Judicial Forums repeatedly and the basic proposition laid down with regard to the same, as pointed out by the Ld.Counsel for the assessee, is that if all particulars of income are disclosed the mere disallowance of

claim or non acceptance of claim of the assessee would not attract levy of penalty as held by the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) at. In the case of Price Waterhouse Coopers Pvt. Ltd. (supra) the Hon'ble Apex Court has held a bonafide mistake on the part of the assessee to not attract levy of penalty where all particulars of income are disclosed but the assessee fails to act accordingly while computing his return of income.

8. Having said so, in the facts of the present case we find that it is not the case that the particulars of income in relation to which penalty has been levied were either inaccurate or they were concealed. The employers contribution to ESI/PF disallowable u/s 43 B of the Act stood disclosed in the tax audit report, interest on TDS & income tax refund, and ESI /Income Tax penalty all stood duly disclosed by the assessee. It is just that while certain disallowances/additions, i.e. ESI & PF and Interest on refund & TDS and difference in interest receipts reflected in Form 26AS and that returned, were inadvertently missed to have been made by the assessee who surrendered the same when it was made aware during scrutiny assessment, the rest being minor penalty of ESI of Rs. 10,431/- and

interest on late payment of TDS, income tax and service tax penalty of Rs.7477/- were contested as being compensatory and hence allowable but were subsequently offered for taxation. We have noted that the current losses returned by the assessee ,as per copy of ITR alongwith computation of income for the year filed before us, was Rs.78,98,857/- and the brought forward business were Rs.30,86,198/- and brought forward depreciation of Rs.48,12,659/- making the total losses as approx. Rs.1.50 crores. Considering the huge losses, the additions and disallowances inviting the levy of penalty amounting in all to Rs.5,59,803/-, are too immaterial and coupled to it is the fact that a major portion of it relating to ESI/PF disallowed u/s 43B of the Act of Rs.4,79,986/- had stood disclosed in the tax audit report as disallowable but was inadvertently left out while computing the income for the year. The same is clearly not liable to any penalty being squarely covered by the decision of the Hon'ble Apex court in the case of Price Waterhouse Coopers(supra).The remaining additions/disallowances of Rs.79,817/- are pathetically immaterial and can be safely said to have been bonafidely mistakenly not disallowed/added back to the income of the assessee as claimed by it.

9. In these background we hold that no penalty u/s 271(1)(c) of the Act was leviable on account of additions made as listed above in our order and the order of the Ld.CIT(A), therefore, upholding levy of penalty is set aside and the AO is directed to delete the penalty so levied.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 4th October, 2021.

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायकि सदस्य/Judicial Member

दिनांक /Dated: 4th October, 2021

रती

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar