

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 4418/Mum/2018  
(Assessment Years: 2005-06)**

Til Investments P. Ltd., 306, Jai Antarikash, Near Thakar House, Makwana Road, Andheri Kurla Road, Andheri (E), Mumbai.	<b>बनाम/ Vs.</b>	ITO 7(3)(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCT4024F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	None
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Pratap Singh, DR

सुनवाई की तारीख / Date of Hearing	13/10/2020
घोषणा की तारीख /Date of Pronouncement	14/10/2020

**आदेश / O R D E R**

**PER PAVAN KUMAR GADALE - JM:**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -18, Mumbai, passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. None appeared on behalf of the assessee, we heard the submissions of Ld. DR and considered the material available on record. The assessee has raised the following grounds of appeal:

1. The Ld. CIT(A) had erred in sustaining the penalty of Rs. 6,39,324/-.

2. The order of the Ld. CIT(A) is bad in law and on the facts of the case.

3. That we would be allowed to alter, amend or add fresh grounds of appeal at the time of hearing.

4. Appellant prays that the penalty be deleted.

2. The brief facts of the case are that the assessee company is engaged in the business of purchase and sale of shares and has income from sale of shares, dividend income and interest on fixed deposits. The assessee company has filed the return of income for the A.Y 2005-06 on 25.10.2005 with total loss of Rs. 9, 10,224/-. But, the A.O considering the submissions and information on record passed order u/s 143(3) of the Act dated 24.07.2007 determining the total income of Rs10,07,986/-. Subsequently, the A.O has initiated penalty proceedings u/s 271(1)(c) of the Act. The assessee has filed explanations on 26.03.2012. Whereas, the A.O found that the

assessee has claimed setoff of speculation loss against the income on fixed deposits. In the assessment proceedings income on fixed deposits was taxed and the speculation loss was allowed to be carry forward. The A.O found that the assessee has not given satisfactory explanations on the claim. The observations of the A.O are that the trading in shares is to be treated as speculation business and applied the provisions of the Sec. 73 of the Act and levied a penalty of Rs.6,39,324/- and passed order u/s 271(1)(c) of the Act dated 30.02.2012. Aggrieved by the penalty order the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) considered the grounds of appeal and submissions of the assessee but confirmed the penalty and dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A) the assessee has filed an appeal with the Tribunal.

3. At the time of hearing none appeared on behalf of the assessee. We heard the submissions of the Ld. DR and perused the material on record. The Ld. DR supported the orders of the CIT(A). The assessee company has claimed the set off of business loss against the income from other sources, whereas, the

A.O has treated it as speculation loss and taxed income on fixed deposits and passed the order u/s 143(3) of the Act. We find that, the assessee is engaged in the business of trading in shares and derive income from sale of shares, dividend income and Interest on fixed deposits. The A.O in the assessment proceedings invoked the explanations to Sec. 73 of the Income Tax Act and is of the opinion that the assessee's income is in the nature of speculation income, therefore sale and purchase of shares are speculation activities. Hence the set off of speculation loss with other income is not permitted. The assessee has disclosed the dividend income, interest on fixed deposits under income from other sources, though the dividend income is exempted. The assessee has claimed the set off of business loss against income from other sources. The assessee is an investment company and the main objects are to make investments and trading in shares and to receive dividend income. The assessee has disclosed the income in the financial statements which is not disputed by the A.O. We find that the A.O. has levied the penalty because of set off claimed by the assessee

and the mere disallowance or disagreement of a claim cannot be a basis for levy of penalty and also the addition made in the assessment order by the A.O cannot be a gateway for automatic levy of penalty. The Ld. CIT(A) has passed a elaborate order confirming the penalty, overlooking the facts, nature and method of operations of the assessee business. We are of the view that penalty cannot be automatic and rely on the decision of the CIT Vs. Manjunatha Cotton and Ginning factory, [2013] 359 ITR 564 (Kar), and the principles as under:

*“In the case of **CIT Vs. Manjunatha Cotton and Ginning Factory, Karnataka High Court** has laid down the following Principles for levy of penalty Under section 271(1)(c) of the Income Tax Act, 1961 :-*

*(a) Penalty under Section 271(l)(c) is a civil liability.*

*(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*

*(c) Wilful concealment is not an essential ingredient for attracting civil liability.*

*(d) Existence of conditions stipulated in Section 271(l)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*

*(e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*

*(f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(l)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the*

*said order which would by a legal fiction constitute concealment because of deeming provision.*

*(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).*

*(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*

*(i) The imposition of penalty is not automatic.*

*(j) Imposition of penalty even if the tax liability is admitted is not automatic.*

*(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.*

*(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.*

*(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.*

*(n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.*

*(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.*

*(p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(l)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income*

*(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.*

*(r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.*

*(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.*

*(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.*

*(u) The findings recorded in the assessment proceedings insofar as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings.*

5. Further, the A.O has levied the penalty for concealment of income as the assessee company has the treated the speculation loss as a business loss and claimed set off against the income from other sources. We find that, the claim of the assessee is in consideration of the financial statements and the assessee adopted one of the possible views that the

business loss can be set off against the income from other sources. The assessee has made a claim under the bonafide belief that it is allowable under the law. We also rely on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroleum Products Ltd., 322 ITR and the observations are read as under:

*“271(1) If the A.O or the commissioner (Appeals) or the commissioner in the course of any proceedings under the Act, is satisfied that any person (c) has concealed the particular of his income or furnished inaccurate particulars of such income.*

*A glance at his provision would suggest that in order to be covered there has to be concealment of the particular of the income of the assessee. Secondly, the assessee must have furnished inaccurate particular of his income. The present is not a case of concealment of the income. That is not the case of the revenue either. However, the Ld. Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particular of the income. As per law lexicon, the meaning of the word “particulars” is a details or details (in plural sence); the*

*details of the claim, or the separate item of an account. Therefore, the word “particular used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The ld. counsel argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income”. We do not think that such can 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 provisions, the penalty provisions cannot be invoked. By an stretch of imagination, making an incorrect claim in law cannot be tantamount to furnishing inaccurate particulars”.*

6. Accordingly, we follow the ratio of the judicial decisions and set aside the order of the CIT(A) and direct the A.O to delete the penalty and allow the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.10.2020

Sd/-

(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE )  
JUDICIAL MEMBER

Mumbai, Dated 14/10/2020

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai