IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.4173/Del/2014
Assessment Year : 2005-06

M/s Krishna Maruti Limited, B-5, Chirag Enclave, New Delhi – 110 048. PAN : AAACK1316N. (Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle-5(1), New Delhi. (Respondent)

Appellant by : Shri Gautam Jain, Advocate and
Shri Lalit Mohan, CA.
Respondent by : Smt. Naina Soin Kapil, Senior DR.

Date of hearing : 08.01.2019
Date of pronouncement : 09.01.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the assessee for the assessment year 2005-06 is directed against the order of learned CIT(A)-IV, New Delhi dated 27th May, 2014.

2. The only ground raised by the assessee is against the levy of penalty of ₹22,57,083/- under Section 271(1)(c) of the Income-tax Act, 1961.

3. The facts of the case as noted in the penalty order are reproduced below :-

"Amount of revenue expenditure claimed by
the assessee being 150% of expenses on R&D *70,38,750*

Less : 100% of revenue expenditure allowed	*46,92,500*
Amount disallowed	*23,46,250*
Amount of capital expenditure claimed by the assessee being 150% of expenses on the purchase of plant and machinery	*3,79,82,700*
Less : 40% of depreciation allowable on the purchase of above two machines for Rs.26516377	*1,06,06,550*
Amount disallowed	*2,73,76,249*

The ld.CIT(A) vide order dated 09.03/2009 in Appeal No.72/07-08 partially allowed the appeal of the assessee on this issue. The ld.CIT(A) held that the assessee is eligible for deduction under Section 35(1)(iv) rather than under Section 35(2AB). The ld.CIT(A) held that the machines on which the claim of 100% of deduction under Section 35(1) is claimed being used research and development are separate and distinct from the machines which the assessee has used for the purpose of manufacturing process. Therefore, capital expenditure to the extent of Rs.3,41,60,592/- is a allowable deduction as against the depreciation allowed by the AO. However, the claim of weighted deduction of Rs.1,14,66,322/- @ 150% on R & D Equipments amounting to Rs.76,44,215/- is not allowed, thereby Ld.CIT(A) confirmed the addition to the extent of Rs.38,22,107/- (Rs.1,14,66,322/- minus Rs.76,44,215 -). Similarly, the disallowance of weighted deduction on revenue expenditure to the extent of Rs.23,46,050/- (Rs.70,38,750/- minus Rs.46,92,500/-) as made by the AO is also confirmed by the ld.CIT(A).

Thus, it is evident that the assessee has concealed its income as well as furnished inaccurate particulars by claiming weighted deduction under Section 35(2AB) amounting to Rs.61,68,157/- (Rs.38,22,107/- plus Rs.23,46 050/-), which as per law is not allowable to him as the assessee does not satisfied the conditions to be fulfilled under Section 35(2AB).

In view of above, it is clear that the assessee has claimed wrong deduction to the extent of Rs.61,68,157/- thereby concealing of its income as well as furnishing of inaccurate particulars of his income with a view to evade taxes. A penalty of Rs.22,57,083/- is therefore imposed under Section 271(1)(c) of the IT Act as per following calculation :"

4. At the time of hearing before us, it is stated by the learned counsel that the assessee derives income from manufacturing of door

trims, roof head liner for automobiles and body parts for scooters etc. That during the year under consideration, the assessee has incurred certain capital as well as revenue expenditure on research and development for developing its products and claimed deduction u/s 35(2AB) which is permissible at the rate of 150% of the actual expenditure incurred. The Assessing Officer treated the expenditure to be genuine but held that it was not incurred for any research purposes and therefore, allowed deduction at the rate of 40% on the purchases of two machineries and allowed 100% of the revenue expenditure. That the learned CIT(A) accepted the assessee's claim that the entire expenditure was incurred on research and development. However, he held the assessee to be eligible for deduction u/s 35()1)(iv) rather than 35(2AB). Thus, learned CIT(A) allowed the deduction at the rate of 100% as against 150% claimed by the assessee of the total expenditure incurred by the assessee on research and development. It resulted in the addition of ₹61,68,157/-. That the Assessing Officer treated the same as furnishing of inaccurate particulars of income and levied penalty u/s 271(1)(c) of the Act thereon. He stated that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of CIT Vs. Reliance Petroproducts Pvt.Ltd. – [2010] 322 ITR 158 (SC) and the following decisions of Hon'ble Jurisdictional High Court :-

(i) Principal CIT Vs. Neeraj Jindal – [2017] 393 ITR 1 (Del).
(ii) Principal CIT Vs. Samtel India Ltd. – ITA No.43/2017.

He stated that no details or particulars furnished by the assessee were found to be incorrect, false or wrong and, therefore, merely because the deduction is allowed at the rate of 100% as against 150%, it cannot be said that the assessee furnished inaccurate particulars of its

income. He, therefore, submitted that the penalty levied u/s 271(1)(c) of the Act may be cancelled.

5. Learned Senior DR, on the other hand, stated that it is a clear case of furnishing of wrong particulars by the assessee. It was a wrong claim of deduction at 150% when the actual deduction is permissible at 100%. She, therefore, stated that on these facts, the following decisions of Hon'ble Jurisdictional High Court would be squarely applicable :-

(i) CIT Vs. Morgan Finvest (P.) Ltd. – [2013] 213 Taxman 23 (Delhi)(Mag.).

(ii) CIT Vs. Zoom Communication P.Ltd. – [2010] 327 ITR 510 (Delhi).

6. We have carefully considered the arguments of both the sides and perused the material placed before us. In the case of Reliance Petroproducts Pvt.Ltd. (supra), Hon'ble Apex Court held as under :-

> *"Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."*

7. That Hon'ble Jurisdictional High Court has considered this decision and some other decisions in the case of Samtel India Ltd. (supra) and their Lordships held as under :-

> *"11. A glance at the Section 271(1)(c) presents two essentials -"concealment" and "furnishing inaccurate*

particulars of income". The current appeal is, however, only concerned with the interpretation of the phrase "furnishing inaccurate particulars of income." The Revenue claims that by furnishing a wrong claim the assessee has "furnished inaccurate particulars of income."The meaning of the phrase "furnishing inaccurate particulars of income" was explained by the Supreme Court in the case of Commissioner of Income Tax vs Reliance Petroproducts Pvt Ltd [(2010)322ITR158] by bifurcating "particulars" and "inaccurate" where particular was explained to include the details of a claim, or the separate items of an account. The word "inaccurate" was explained as "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript." When these words are read in conjunction with each other then it may seem that the details supplied in the Re urn are not accurate, not exact or correct, not according to truth or erroneous. No doubt, the effect of that judgment has been explained in a later decision; yet its emphasis on the literal interpretation of the word "inaccurate" has not been diluted.

12. From the facts of this case it is clear that the assessee disclosed all the particulars of his income. The AO has disallowed his claim without holding it to be bogus or false. Hence, the genuineness of the loss occurred is not at question here. The Supreme Court while elaborating the scope of section 271(1)(c) in CIT vs Reliance Petroproducts Pvt Ltd [2010] 322 ITR 158 held that- "A glance of provision of section 271(l) (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]"

Similarly, in the present scenario, the assessee cannot be penalized for making a claim which in itself is unsustainable in law. The Supreme Court further held in the Reliance Petrochemicals case that-

"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 for any reason, the assessee would invite penalty under section 271(1)(c)."

13. The intention of the Parliament cannot be taken to have been to penalize everyone who makes a wrong claim for deduction. The legislature does not intend to penalize every person whose claim is disallowed. This is not the aim of the legislature. The Tribunal in the facts of this case, therefore, correctly reached this conclusion. The question of law is answered in favour of the assessee and against the Revenue; therefore, the appeal has no merit and is dismissed."

8. Learned Senior DR has relied upon the decision of Hon'ble Jurisdictional High Court in the case of Morgan Finvest (P.) Ltd. (supra), wherein their Lordships sustained the levy of penalty u/s 271(1)(c) holding the claim of depreciation not *bona fide* with the following finding :-

"Even if it is assumed that the assessee continued to remain the owner of the property throughout the year, the other condition of Section 32, that the property should have been used for the purpose of the assessee's business has not been satisfied. There is no proof that the director resided in the property and it was only a claim made by

the assessee in the course of the arguments. The Assessing Officer has rightly brought out in the assessment order that having regard to the short period during which the assessee held the property, which it had acquired with the use of borrowed funds, an intention to make a quick profit on the property deal cannot be ruled out. In this background, and considering the fact that there is no evidence to show use of the property during the relevant previous year for the purpose of the assessee's business, it is clear that the claim of depreciation was not bona fide. Moreover, while claiming depreciation, the cost of the land was also included, contrary to the provisions of the Act under which no depreciation is allowable on land."

9. However, the facts in the case under appeal before us are altogether different. The assessee has claimed that it has incurred certain expenditure partly capital and partly revenue for research purposes. The genuineness of expenditure was not doubted by the Assessing Officer himself but he opined that the expenditure was incurred for the purpose of business of manufacturing and not for research purposes. The CIT(A) accepted that the expenditure was incurred for research purposes The said order of learned CIT(A) has become final. Thus the assessee's claim that it incurred the expenditure for the purpose of research has been upheld. The only disallowance sustained by the learned CIT(A) was with regard to the rate of deduction permissible for expenditure incurred on research. The assessee claimed deduction at the rate of 150% i.e., u/s 35(2AB) while the learned CIT(A) allowed deduction u/s 35(1)(iv). Therefore, in our opinion, the above decision of Hon'ble Jurisdictional High Court in the case of Morgan Finvest (P.) Ltd. (supra) would not be applicable to the facts of the assessee's case.

10. In the case of Zoom Communication P.Ltd. (supra), Hon'ble Jurisdictional High Court held as under :-

"*In the case of Reliance Petroproducts P.Ltd. [2010] 322 ITR 158 (SC), the addition made by the Assessing Officer in respect of the interest claimed as a deduction under section 36(1)(iii) of the Act was deleted by the Commissioner of Income-tax (Appeals) though it was later restored, by the Tribunal, to the Assessing Officer. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances, that the Tribunal came to the conclusion that the assessee had neither concealed the income nor filed inaccurate particulars thereof. In recording this finding, the Tribunal felt that if two views of the claim of the assessee were possible, the explanation offered by it could not be said to be false. This, however, is not the factual position in the case before us. The facts of the present case thus are clearly distinguishable.*

It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect in law is mala fide, Explanation 1 to section 271(1)(c) would come into play and work to the disadvantage of the assessee."

11. Thus, their Lordships of Hon'ble Jurisdictional High Court have held that mere subm tting a claim which is incorrect in law would not amount to giving inaccurate particulars of income of the assessee but the claim made by the assessee needs to be *bona fide*. If the claim besides being incorrect in law is mala fide, Explanation 1 to Section 271(1)(c) would come into play. Therefore, the precise question before us is to give a finding whether the claim of the assessee is bona fide or not. As we have already mentioned that in this case, the claim of the assessee that it incurred expenditure on scientific research has already been accepted by the learned CIT(A), so there is no question of claim being mala fide. The position remains after the order of the CIT(A) is that the assessee's claim that it incurred expenditure on scientific research stood accepted but the deduction is allowed at the rate of

100% instead of 150% as claimed by the assessee. In our opinion, merely because the rate of deduction is reduced by the CIT(A), it cannot be said that the claim of the assessee is mala fide or incorrect. That Hon'ble Jurisdictional High Court in a recent decision i.e., order dated 9th July, 2018 in the case of Samtel India Ltd. (supra) has re-examined the decision of Reliance Petroproducts Pvt.Ltd. (supra) and held that unless the details supplied in the return of income are not accurate, not exact or correct, not according to truth or erroneous, it cannot be said to be inaccurate particulars. In the case under appeal before us, admittedly, the particulars of expenditure incurred by the assessee have been accepted to be true and accura e by the Assessing Officer himself because he has not doubted the genuineness of the expenditure incurred. He only disputed whether the expenditure was incurred for normal business of manufacturing or for research work. This claim is also accepted by the learned CIT(A) that the expenditure was incurred for research purposes The disallowance was made only because the deduction was allowed at a lesser rate than what was claimed by the assessee. On these facts, in our opinion, the decision of Hon'ble Apex Court in the case of Reliance Petroproducts Pvt.Ltd. (supra) and the recent decision of Hon'ble Jurisdictional High Court in the case of Samtel India Ltd. (supra) would be squarely applicable. Respectfully following the same, we cancel the penalty levied under Section 271(1)(c) of the Act.

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

Decision pronounced in the open Court on 09.01.2019.

Sd/-	Sd/-
(SUDHANSHU SRIVASTAVA) JUDICIAL MEMBER	(G.D. AGRAWAL) VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : M/s Krishna Maruti Limited,
   B-5, Chirag Enclave, New Delhi – 110 048.

2. Respondent : Assistant Commissioner of Income Tax,
   Circle-5(1), New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar