

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.3240/Chny/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s.I.C.I Projects India Pvt.Ltd (Formerly known as M/s. C.S.Projects India Pvt.Ltd.) 5/1, Veterinary Hospital Road, Erode-638 001.	Vs	Income Tax Officer, Ward-1(1), Erode.
PAN: AADCC 8560H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.G. handrababu, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	23.02.2021
घोषणाकीतारीख /Date of Pronouncement	:	19.03.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of learned CIT(A) -3, Coimbatore dated 18.08.2016 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:-

“Against order of CIT (A)-III, passed under sec 271(1) (c) of the Act (stated as order under sec. 143(3)) Coimbatore. in I.TA. No. 268/15-16(A)1 dated 18.8.16.

1. *The order of the Commissioner or Income Tax (Appeals) in as much as he has held against the Appellant by upholding the levy of penalty under sec 271(1)(c) of the act is opposed to law and to principles of natural justice and the liable to be cancelled.*

2. *The Commissioner of Income Tax (Appeals) erred in not considering the grounds of appeal in proper perspective. The submissions of appellant has not been brought out and considered in detailed manner.*

3. *The Commissioner of Income Tax (Appeals) erred in confirming the penalty r levied by the Assessing authority and failed to taken into consideration that Assessing Officer has not recorded the requisite satisfaction in the body of assessment order for levying penalty under sec 271(l) (c) of the act.*

4. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the Assessing authority having failed to comply with the provisions of sec 271(1) (c) of the act with regard to initiation of penalty proceedings, the proceedings are vitiated and consequently the penalty order passed was invalid.*

5. *The Commissioner of Income Tax (Appeals) failed to appreciate the fact that penalty proceedings art independent from that of the Assessment proceedings and ought to have considered submissions of appellant on merits of the mailer based on the facts and circumstances of the case.*

6. *The Commissioner of Income Tax (Appeals) has erred in not noting that the appellant had neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty under the act. The penalty levied ought to be cancelled.*

7. *The Commissioner of Income Tax (Appeals) ought to have appreciated the fact that mere additions or disallowance made in the assessment proceeding would not automatically result in levy of penalty under sec 271(1) (c) of the act when there was no proof with regard to concealment of income of the appellant or furnishing of inaccurate particulars by the appellant and penalty is liable to be cancelled.*

8. *The Commissioner of Income Tax (Appeals) was not justified in ignoring the fact the Assessing authority has issued notice without proper application of mind under sec 271(1) (c) rws 274 of act without specifying the reasons for initiation of penalty as*

to whether it relates to concealment of income or for furnishing of inaccurate particulars of income. Consequently Order of penalty passed on the basis of invalid notice is void and deserves to be deleted. This stand of the appellant is supported by various judicial pronouncements.

9. The Commissioner of Income Tax (Appeals) failed to note that the appellant had not contested the Assessment proceedings and mere admission of addition to avoid further litigation and payment of tax does amount to concealment of income or furnishing of inaccurate particulars of income as held by in various judicial pronouncements.

10. The levy of penalty is excessive, arbitrary and liable to be deleted in toto.

11. The Appellant contests all the findings of fact and law made by the Commissioner of Income Tax (Appeals) against the appellant.

12. The Appellant craves leave to file Additional grounds of appeal at or before the time of hearing.

13. Any other ground that may be raised at the lime of personal hearing.”

3. At the time of hearing, learned AR for the assessee submitted that there is a delay in filing of appeal for which necessary petition for condonation of delay along with affidavit has been filed explaining the reasons for the delay in filing appeal. According to the learned AR for the assessee, the assessee has filed appeal within the specified time limit allowed under the Act, but the Tribunal has considered delay on the

basis of challan for payment of appeal fee on 20.04.2017 which resulted in delay of 164 days from expiry of time limit prescribed for filing appeal. But, fact remains that the assessee after receipt of defect notice from the Tribunal on 17.11.2016, had remitted appeal fees on 22.11.2016, however, the same was communicated to Tribunal on 20.04.2017. If the date of filing appeal is considered, there is no delay in filing the appeal and if the date of payment of appeal fee is considered, then there is a delay of 10 days in filing the appeal. He further submitted that, be that as it may but fact remains that there is inadvertent error in not paying appeal fees before filing the appeal due to mistake of a person, who was handling papers, but there is no willful negligence on the part of the assessee not to file appeal within the time allowed under the Act. Therefore, considering the fact that the assessee has shown interest in filing appeal within the due date specified under the Act, marginal delay of ten days may be condoned in the interest of advancement of substantial justice .

4. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

5. We have heard both the parties and considered petition filed by the assessee for condonation of delay along with reasons given for not filing appeal within due date specified under the Act . Admittedly, the assessee has filed appeal on 08.11.2016, which is well within the due date specified under the Act, but, the Tribunal has not considered appeal filed by assessee on 08.11.2016 for the reason that appeal papers did not have challan for payment of appeal fee and hence, considered the date of filing of appeal when the assessee has communicated challan for payment of appeal fee on 20.04.2017. If the date of communication of challan for payment of appeal fee is considered i.e 20.04.2017, then there is a delay of 164 days in filing appeal. If the date of filing the appeal without challan for payment of fees is considered, there is no delay. The assessee explained the reasons for not attaching challan for payment of appeal fee and further, immediately after receipt of defect memo, payment of fees has been remitted on 22.11.2016. If the date of payment of appeal fee is considered, then there is a marginal delay of ten days in filing appeal. Therefore, considering the fact that the assessee

has explained his bonafide in filing appeal within due date and considering the facts and circumstances of the case and also fact that assessee has paid appeal fees immediately on receipt of defect memo, we deem it appropriate to condone the delay in filing appeal in the interest of advancement of substantial justice. Hence, the delay in filing the appeal is condoned and admit the appeal for hearing.

6. Brief facts of the case are that the assessee company is engaged in the business of project consultant and rendering map drawing works in engineering field filed its return of income for the assessment year 2012-13 on 24.05.2013 declaring total income of ₹ 29,88,480/-. The assessment for impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961, on 31.03.2015 determining total income at ₹ 80,04,299/- after making additions towards unproved liabilities / cessation of liability and unexplained cash credit u/s. 68 of the Act for the reason that the assessee has failed to prove liability shown under the head map drawing charges and has also failed to prove unsecured loan taken from Mr.Karur Ramasamy amounting to ₹ 13,00,000/-.

7. Thereafter, penalty proceedings u/s.271(1)(c) of the Act was initiated by issue of notice u/s.274 r.w.s 271(1)(c) of the Act. In response, the assessee submitted that it has neither concealed particulars of income nor furnished inaccurate particulars of income, in respect of additions made towards unproved liability, because, the assessee has furnished necessary evidences to prove liability and also persons, who received payment from the company has admitted the fact that they have rendered services in connection map drawing work and has also received payment in full. But, the Assessing Officer has disregarded all evidences filed by the assessee and has made additions only on the basis of field report received from Inspector of Income Tax, where he has stated that persons have stated that they do not have any outstanding as on 31.3.2012. Similarly, in respect of unsecured loan received from Mr.Karur Ramasamy, the assessee has filed confirmation from parties, but the Assessing Officer has made addition only on the ground that no proper explanation was furnished to explain unsecured loan shown in the name of Mr.Karur Ramasamy. Therefore, when the assessee has furnished

necessary evidences in respect of certain payments, merely for the reason that said payment has not been substantiated to the satisfaction of the Assessing Officer, the same cannot be considered as willful attempt made for concealment of particulars of income to evade payment of taxes which warrants penalty u/s. 271(1)(c) of the Act.

8. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to him, the assessee has failed to explain outstanding liability shown under the head map drawing charges with necessary evidences. The Assessing Officer further observed that even in respect of unsecured loan, the assessee company has not filed any evidences to explain loan taken from the party. Therefore, he opined that mere payment of amount by cheque is not sufficient enough to prove liability and filing confirmation letter is not enough to prove onus cast upon the assessee u/s.68 of the Act. Accordingly, he opined that the assessee has furnished inaccurate particulars of income in respect of unproved liability and unexplained cash credits and hence, by following the decision of Hon'ble Supreme Court in the case of

UOI Vs. Dharmendra Textile Processors (2008) 116 Taxman 65(SC) levied penalty of ₹ 15,49,889/- which is equivalent to 100% of tax on the concealed income.

9. Being aggrieved by the penalty order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee has reiterated its submissions made before the Assessing Officer to argue that it has furnished necessary evidences in respect of liability shown under the head map drawing charges and further recipient of payment has been confirmed before the Inspector that they have received payment for rendering services. Therefore, merely for the reason that parties have not confirmed date of payment of money no adverse inference can be drawn against the assessee that liability is unproved so as to impose penalty u/s.271(1)(c) of the Act. As regards unexplained cash credit being loan taken from Mr. Karur Ramasamy, the assessee has discharged its onus by filing confirmation letters, therefore, the same cannot be considered as unproved creditors so as to levy penalty u/s.271(1)(c) of the Act. The learned CIT(A), after considering relevant submissions of the assessee held that the

facts brought by the Assessing Officer clearly indicate that the assessee had concealed income in respect of unproved liability reflected as sundry creditors and has also agreed for addition during the assessment proceedings. Therefore, he opined that it is a clear case of concealment of income falling within the ambit of section 271(1)(c) of the Act, accordingly, rejected arguments taken by the assessee and confirmed penalty levied u/s.271(1)(c) of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

10. The learned AR for the assessee submitted that the learned CIT(A) has erred in not appreciating the fact in light of provisions of section 271(1)(c) of the Act before confirming the penalty levied by the Assessing Officer in respect of additions towards unproved liabilities and unexplained cash credit u/s.68 of the Act, because any claim of expenditure which was not substantiated before the Assessing Officer cannot automatically lead to conclusion that assessee has concealed particulars of income or furnished inaccurate particulars of income. The learned AR further submitted that the assessee has filed all evidences in respect of unproved liability towards

map drawing charges and further parties to whom payment was made were also confirmed receipt of payment, but only point which was considered by the Assessing Officer is statement of parties regarding date of payment of liability, otherwise all the parties have accepted the fact that they have rendered services to the company and has also received payment in cash. Therefore, when the assessee has filed all those evidences, the Assessing Officer has erred in coming to the conclusion that liability is unproved. Further, when a claim is made towards expenditure with necessary evidence, but the same could not be substantiated to the satisfaction of the Assessing Officer cannot be considered as willful furnishing of inaccurate particulars income so as to evade payment of taxes. The learned AR further submitted that insofar as unsecured loan received from Karur Ramasamy, it was not the case of the Assessing Officer that identity of party was not proved. In fact, the assessee has filed confirmation letters from the parties. Therefore, the Assessing Officer has erred in coming to the conclusion that unsecured loan taken from party become unexplained credit is liable to be taxed u/s.68 of the Act and

further, which amounts to willful concealment of particulars of income within the meaning of section 271(1)(c) of the Act. In this regard, he has relied upon the decision of co-ordinate Bench of Tribunal in the case of Lata Hospitals Pvt.Ltd. Vs.DCIT, Visakhapatnam in ITA No. 649/Vizag/2014 vide order dated 09.09.2016 and also the decision of Hon'ble Supreme Court in the case of CIT Vs.Reliance Petro Products Pvt.Ltd. 322 ITR 150.

13. The learned DR, on the other hand, supporting the order of learned CIT(A) submitted that it is a fact on record that the assessee has failed to prove unpaid expenses and unexplained cash credit in respect of loan taken from Karur Ramasamy, which is evident from the fact that the Assessing Officer has brought out clear facts in respect of both the additions, where no evidence has been filed to prove unpaid liability. Further, the report of Inspector of income tax clearly proves that there was no outstanding payment as on 31.3.2012 in respect of unpaid liability. Therefore, it is incorrect on the part of the learned AR for the assessee to argue that it has furnished all the details in respect of unpaid liability and

unexplained cash credit. The Assessing Officer as well as learned CIT(A) has rightly held that assessee has concealed particulars of income, which attracts penalty u/s.271(1)(c) of the Act.

12. We have heard both the parties, perused materials available on record and gone through the orders of authorities below along with case laws cited by the learned counsel for the assessee. The Assessing Officer has levied penalty in respect of two additions i.e, i)unproved liability in respect of map drawing charges, & ii) unexplained cash credit in respect of unsecured loan taken from Mr. Karur Ramasamy u/s.68 of the Act. As regards unproved liability, the only reason given by the Assessing Officer to make addition is that recipient of payment has stated that there is no outstanding as on 31.3.2012, except this, the Assessing Officer has not doubted the fact of rendering services by the parties and payment received against such services. Under these facts, on examining the reasons given by the Assessing Officer for levy of penalty u/s.271(1)(c) of the Act, we find that the reasons given for levy of penalty is not on sound footing, because the sole basis for making

addition is report of Inspector of income tax, which was taken during the course of assessment proceedings, which was in the year 2015, whereas, payment against services has been made in the year 2011 and 2012. Therefore, obviously it is very difficult for the recipient of payment to confirm exact date of receipt of money. Therefore, for that reason alone, it cannot be inferred that liability shown in the books of account is unexplained. Moreover, the Assessing Officer has not disputed the fact that the assessee has furnished all evidences in respect of unproved liability. In fact, recipient of payment has confirmed rendering of services as well as receipt of money. Therefore, at best the case can be considered as claim of expenditure with necessary evidence, but unsubstantiated to the satisfaction of the Assessing Officer. It is a well settled principle of law by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd (supra) that mere making of claim which is not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding income of the assessee. Therefore, we are of the

considered view that on this addition, penalty u/s.271(1)(c) cannot be levied.

13. As regards, additions made towards unexplained cash credit being unsecured loan taken from Mr. Karur Ramasamy amounting to ₹ 13,00,000/-, it was the explanation of the assessee before the Assessing Officer that party has confirmed loan given to the assessee. Once the assessee has furnished confirmation letters to prove identity of the parties, then initial burden cast upon the assessee was successfully discharged. No doubt, the Assessing Officer may not accept the explanation furnished by the assessee with regard to source and nature of credit, but that by itself would not be a ground to reject explanation furnished by the assessee, when the assessee genuinely explains the credits found in books of account disclosing all necessary facts. Therefore, merely for the reason that the Assessing Officer has not satisfied with the explanation furnished by the assessee, it cannot be said that the assessee has furnished inaccurate particulars of income. Therefore, on this count also, penalty levied by the Assessing Officer u/s.271(1)(c) of the Act is incorrect. Therefore, considering the

facts and circumstances of the case, we are of the considered view that the Assessing Officer has erred in levying penalty u/s.271(1)(c) of the Act in respect of the two additions. The learned CIT(A), without appreciating the facts has simply confirmed penalty levied by the Assessing Officer, hence, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete penalty levied u/s.271(1)(c) of the Act.

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

Order pronounced in the open court on 19th March, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai
दिनांक/Dated 19th March, 2021
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.