IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

INCOME TAX APPEAL No. 142 of 2003

BETWEEN:-

THE COMMISSIONER INCOME TAX – 1, AAYKAR BHAWAN, INDORE (MADHYA PRADESH)

.....APPELLANT

(BY MS. VEENA MANDLIK, ADVOCATE)

AND

M/S S.KUMAR TYRES MANUFACTURING CO. LTD., PITHAMPUR, DISTRICT – DHAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI P.M. CHOUDHARY, SENIOR ADVOCATE ASSISTED BY SHRI D.S. KALE, ADVOCATE)

Reserved on: 7th September 2022

Delivered on: 04th November, 2022

This appeal coming on for final hearing this day, ***JUSTICE VIVEK RUSIA*** *passed the following:*

O R D E R

The appellant / Commissioner of Income Tax – I has filed

the present appeal under Section 260-A of the Income Tax Act, 1961 being aggrieved by the order dated 30.04.2003 passed by the Income Tax Appellate Tribunal in ITA Nos.284/IND/02 and 339/IND/02 for the Assessment Year, 1992-93.

02. The facts of the case in short are as under:-

2.1. Respondent / Company was established in the year 1985 and thereafter entered into the manufacturing of tyers and trading of fabrics. The respondent filed an IT return on 31/12/1992 showing the loss of Rs. 1,02,86,772/- with a Tax Audit Report both for the Tyer Division and Fabric Division. During the assessment proceedings, it was noticed that the respondent started its commercial production on 4/5/1988 with business losses claimed in the AY 1989-90. Letter on the respondent claimed that commercial production was started on 1/31992 but the Assessment Officer did not accept the claim of the petitioner in respect of capitalizing the amount of Rs.6,00,91,886/- in respect of expenses and loss incurred up to 01.03.1992. The assessment was completed on 28.02.1995 determining total income of Rs.2,42,17,558/- with following conditions: -

1	Disallowance of depreciation	Rs.0,67,58,503/-
2	Disallowance of expenses under the head (verification & valuation)	Rs.0,06,46,956/-
3	Wrong claim of exps. Under the head Publicity	Rs.0,08,50,530/-
4	Addition towards shrinkage of cloth	Rs.0,00,71,808/-
5	Compensation received-from Michelin	Rs.5,18,02,396/-
6	Additional on account of receipt of power subsidy	Rs.0,04,66,116/-

2.2. Being aggrieved by the aforesaid assessment order, respondent/assessee preferred an appeal before the Commissioner of Income Tax (A) and vide order dated 08.12.1995, the appellate authority confirmed the same with additions to the following extent:-

1	Disallowance of depreciation	Rs.0,42,89,325/-
2	Disallowance of expenses under the head (verification & valuation)	Rs.0,05,37,512/-
3	Wrong claim of exps. Under the head Publicity	Rs.0,08,50,512/-
4	Addition towards shrinkage of cloth	Rs.0,00,71,808/-
5	Compensation recd-from michelin-	Rs.5,18,02,396/-
6	Additional on account of receipt of power subsidy	Rs.0,04,66,116/-

2.3. Thereafter the respondent / assessee approached the Income Tax Appellate Tribunal and vide order dated 03.01.1997, the aforesaid assessment has been confirmed to the extent indicated below:-

1	Disallowance of depreciation	Rs.0,42,89,325/-
2	Disallowance of expenses under the head (verification & valuation)	Rs.0,02,88,500/-
3	Wrong claim of exps. Under the head Publicity	Rs.0,08,50,530/-
4	Addition towards shrinkage of cloth	Rs.0,00,35,904/-
5	Compensation recd-from michelin-	Rs.5,18,02,396/-
6	Additional on account of receipt of power subsidy	Rs.0,04,66,116/-

2.4. Later on, vide notice dated 13.07.1997 issued under Section 148 of the Income Tax Act certain income was found to escape from assessment. During the assessment proceedings, the respondent/assessee offered an income of Rs.4,64,164/- on account

of power subsidy and addition of Rs.12,33,469/- on account of interest payable to the financial institution. The assessment Officer finalized the assessment vide order dated 28.02.1995. During this assessment proceeding, the Assessment Officer considered the disclosure made by the respondent/assessee about the receipt of the amount of US $ 11,18,000/- in two instalments paid due to the termination of the agreement. Since the respondent/assessee was maintaining the book of account on the mercantile basis in the Tax Audit report, hence, the first instalment of US $ 11,18,000/- received on 05.12.1991 was disclosed in the return of the Assessment Year, 1992 – 93 and the second instalment of US $ 8,00,000/- received on 13.11.1992 was disclosed in Assessment Year, 1993 – 94. That the entire receipts amount of compensation of Rs.5,18,02,396/- has been taxed as an income of Assessment Year, 1992 – 93.

2.5. Being aggrieved by the aforesaid order of the Assessment Officer, an appeal was filed before the Commissioner of Income Tax. In this appeal, the respondent/assessee contended that the amount received on termination of the agreement was not an account of the surrender of any right or relinquishment of any capital assets but was like reimbursement of the losses and accounts hence ought to have been shown as capital receipts but the Assessment Officer has wrongly construed the same as revenue receipts. The learned Commissioner did not accept the aforesaid contention and held that amount of Rs.5,18,02,396/- received under

settlement on 21.11.1991 has rightly been taxed and business income by the Assessment Officer in the present Assessment Year i.e. 1992 – 93 and dismissed the appeal.

2.6. In pursuant to the aforesaid order, the Deputy Commissioner of Income Tax issued a revised notice of demand and challan. Thereafter, the appellant approached the Income Tax Appellate Tribunal along with an application for a stay. At the instance of the respondent /assessee, an Income Tax Reference was sent to the High Court on the issue of "*whether in the facts and circumstance of case, the Tribunal was justified in concluding the computation of Rs.5,18,02,396/- received by assessee constituted revenue receipt and is liable to be assessed as revenue receipt*" apart from other three questions. Vide judgment dated 06.07.2009 passed in ITR No.62 of 1997, this Court answered the issue in favour of the revenue and against the assessee by holding that the Tribunal was justified in taking the said view that the sum of Rs.5,18,02,396/- constitute a revenue receipt in the hands of the assessee. This Court has also held that amount of Rs.2,19,50,782/- accrued to the assessment in the Assessment Year, 1992 – 93 and rightly brought to tax in the said Assessment Year.

2.7. On the basis of the substantial addition of income in the reassessment proceeding, a penalty proceeding under Section 271(1)(c) of the Income Tax was initiated in respect of all the issues. The respondent/assessee filed a reply to the show-cause notice and vide order dated 31.03.2000, penalty @ 100% i.e.

Rs.3,53,38,900/- has been imposed.

2.8. Being aggrieved aforesaid order, an appeal i.e. Appeal No.IT – 316/2001 – 02/343 was filed before the CIT which was partly allowed vide order dated 15.03.2002. Being aggrieved by the aforesaid, the appeal filed by the respondent/assessee i.e. ITA No. 284/IND/02 has been partly allowed by giving a finding that basic information about the claim had been disclosed by the assessee and since the matter was debatable, it cannot be termed as concealment on the part of the assessee with its deliberate action for evasion of demand of tax. So far as the appeal filed by the appellant i.e. ITA No.339/IND/02 is concerned, the same has been rejected.

2.9. Being aggrieved by the aforesaid order, the appellant's IT department has preferred the present appeal. Vide order dated 28.04.2004, this appeal was admitted on the following substantial question of law:-

> "1. Whether the ITAT was justified in setting aside the penalty imposed upon the assessee U/s 271(1)(c) by holding that since the assessee had disclosed the basic information necessary for adjudicating the claim of the assessee and since the matter in question had become debatable no case of concealment as required under Section 271(1)(c) is made out thereby entitling the A.O. To impose the penalty of Rs.3,53,38,900/-?
>
> 2. Whether a case of imposition of penalty on the facts disclosed and found U/s 271(1)(c) of the Income Tax Act for the Assessment year 1993 – 93 to the extent of

Rs.3,53,38,900/- is made out ?"

03. Ms Veena Mandlik, learned counsel for the appellant argued that penalty proceedings were rightly initiated against the respondent/assessee as there was a concealment of particular income as well as furnishing inaccurate particulars. The First Appellate Authority has rightly imposed the penalty @ 100%. Merely the issue that was debatable in the appeal cannot be a ground for avoiding the penalty under Section 271(1)(2) of the Income Tax Act. In support of the aforesaid contention, she placed reliance upon the judgment delivered in the cases of ***Commissioner of Income Tax v/s Prakash S. Vyas*** *reported in* ***(2014) 272 CTR (Guj) 353*** and ***Commissioner of Income Tax v/s Dharamshi B. Shah*** *reported in* ***(2014) 366 ITR 140 (Guj)***.

04. *Per contra*, Shri P. M. Choudhary, learned Senior Counsel appearing for the respondent/assessee contended that once this Court has given a finding that on a question referred by the Income Tax Department that Rs.5,18,02,396/- was revenue receipt and the respondent/assessee has been subjected to the tax, the High Court itself found that there is a debatable issue and adjudicated it, therefore, it cannot be held that the assessee concealed the particular of the income. In all fairness, the assessee disclosed the income, as per the advice given by his Tax Consultant / Chartered Accountant, as a business receipt, hence, the appellant tribunal has rightly held that it is not a case of concealment of particulars of income or non-furnishing inaccurate particulars of such income. In

support is his contention, learned senior counsel placed reliance upon several judgments delivered in the cases of ***Commissioner of Income Tax v/s Reliance Petroproducts Private Limited*** *reported in* ***(2010) 332 ITR 158 (SC)***, ***Price Waterhouse Coopers Private Limited v/s Commissioner of Income Tax, Kolkata-1 & Another*** *reported in* ***(2012) 11 SCC 316***, ***Union of India v/s Rajasthan Spinning & Weaving Mills*** *reported in* ***(2010) 1 GSTR 66 (SC)***, ***Dadabhoy's New Chirmiri Ponri Hill Colliery Company Private Limited v/s Commissioner of Sales Tax*** *reported in* ***(2004) 2 STJ (M.P.)***, ***Commissioner of Income Tax v/s Ajay Kumar Shankar Lal Agrawal*** *reported in* ***(2004) 269 UTR 385 (M.P.)***, ***Principal Commissioner of Income Tax v/s M/s Shriniwas Board & Papers Private Limited*** *reported in* ***(2019) 7 ITJ Online 141 (M.P.)***, ***Commissioner of Income Tax v/s Shankar Lal Dwarka Das*** *reported in* ***(2005) 144 Taxman 173 (M.P.)***, ***Commissioner of Income Tax v/s Marfatia & Co. reported in (1982) 136 ITR 159 (M.P.)***, ***Commissioner of Income Tax v/s Nayan Builders & Developers*** *reported in* ***(2014) 368 ITR 722 (Bom)***, ***Principal Commissioner of Income Tax v/s Harsh International Private Limited*** *reported in* ***(2021) 431 ITR 118 (Del)***, ***Manglore Ganesh Beedi Works v/s Commissioner of Income Tax & Another*** *reported in* ***(2015) 378 ITR 640 (SC)***, ***Santosh Hazari v/s Purushottam Tiwar*** *reported in* ***(2001) 251 ITR 84X (SC)*** and ***Commissioner of Income Tax v/s Alagendran Finance Limited*** *reported in* ***(2007) 293 ITR (SC)***.

We have heard the learned counsel for the parties at length and perused the record of the case.

05. The primary question of law which requires consideration in this ITA is whether a case for imposition of penalty on the facts disclosed and found under section 271 (1) (c) of the Income Tax Act for the Assessment year 1992-93 to the extent of the Rs. 3,53,38,900/- is made out?

06. Undisputedly the respondent received US$.1118000 equivalent to Rs. 2,88,51,613/- in AY 1992-1993 and thereafter further received Rs.2,29,50,782/- in the AY 1993-94 thus in total received of Rs.5,18,02,396/- from Michelin Foreign Collaborator. According to the assessee the amount was received on extinguishment of rights and claims from a foreign collaborator and hence declared in ITR as capital receipt. According to the appellant, the respondent deliberately shown these receiving of the amount of Rs.5,18,02,396/- as capital receipt. It is further submitted by the learned counsel for the appellant the respondent was having knowledge of the real nature of the transaction i.e. nature of such damage and the receipt, therefore ought to have correctly shown in the returns, thus the assessee furnished inaccurate particulars of such income by attempting to categorise them as a capital receipt which had been confirmed by this Court vide judgment dated 06.07.2009 passed in ITR No.62/1997, therefore, the assessment officer as well as Joint Commissioner of Income Tax have rightly held respondent for penalty under Section

271 (1) (c) on this issue.

07. Learned Income Tax Appellate Tribunal has examined the provision of section 271 (1) (c) under which penalty was levied on receipt of Rs. 2,88,51,613/- and Rs.2,29,50,782/-. It has been held that the company treated the aforesaid amount as payment towards extinguishment of rights and claimed in the nature of capital receipt and in order to avoid capital tax liability the said amount was invested in the IDBI capital bonds within six months and claimed a deduction for the same under Section 54E. Likewise, as regards receiving the amount of Rs. 2,29,50,782/- in the assessment year 1993-94 concerned same was also claimed as capital receipt. Since the issue had been settled by this Court in ITR No.62/1997, therefore, appellate Tribunal has only examined the issue of penalty.

08. For ready reference section 271 is reproduced below:-

> **271. Penalty for concealment of income or improper distribution of profits**.—[2][(1) If the Income-tax Officer, the Appellate Assistant Commissioner [3 or the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that any person—
> (*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of Section 22 or Section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or
> (*b*) has without reasonable cause failed to comply with a notice under sub-section (4) of Section 22 or sub-section (2) of Section 23, or
> ***(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,***
> [4][he or it may direct] that such person shall pay by way of penalty, in the case referred to in clause (*a*), in addition to the amount of the

income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (*b*) and (*c*), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Provided that—

(*a*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of Section 22;

(*b*) where a person has failed to comply with a notice under sub-section (2) of Section 22 or Section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees;

(*c*) no penalty shall be imposed under this sub-section upon any person assessable under Section 42 as the agent of a person not resident in [5][the taxable territories] for failure to furnish the return required under Section 22 unless a notice under sub-section (2) of that section or under Section 34 has been served on him;]

[6][(*d*) [7][when the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (*b*) of sub-section (5) of Section 23, then, notwithstanding anything contained in the other provisions of this Act, the amount of income-tax and super-tax payable by the firm itself shall be taken to be] an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (*b*) and (*c*), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm.]

(2) If the Income-tax Officer, the [8][Appellate Assistant Commissioner] [9][or the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, [10][he or it may direct] that such partner shall, [11][in addition to the income-tax and super-tax, if any, payable by him], pay by way of penalty a sum [12][not

exceeding one and a half times the amount of income-tax and super-tax] which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An [13][Appellate Assistant Commissioner] [14][or the Appellate Tribunal on making] an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.]

[15][(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.]

09. The learned IT Tribunal has found that there was no deliberate attempt to conceal the particular of the income or furnishing any inaccurate particulars thereof does not make the respondent guilty of any violation resulting in the imposition of penalty under Section 271 (1) (c) of the IT Act. Since the respondent was following the mercantile system, therefore, the receipt of Rs. 2,29,50,782/- accrued to the account of the respondent in the assessment year 1992-93 but was disclosed in the assessment year 1993-94, therefore, there was no occasion to disclose the receipt in the return of the assessment year 1992-93. To attract the provision of Section 271 (1)(c) the satisfaction is to be recorded that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. In the present case, the respondent disclosed the source of income as a

capital receipt. The source of receipt of the amount of Rs.5,18,02,396/- from Michelin Company was correctly disclosed. It might be on the basis of the opinion given the by tax consultant or Charted Accountant, it was shown in the capital receipt in the return however, that was a debatable issue, therefore, the reference was sent to High Court.

10. The Apex Court in the case of ***Commissioner of Income Tax v. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)*** has held that to attract this provision of section 271 (1) (c), there has to be concealment of the particulars of the income of the assessee, the particular means the details of the claim made, hence, where the information given in the return is found to be incorrect or inaccurate, the assessee can be held guilty of furnishing inaccurate particulars. The relevant paragraphs are reproduced below:-

> **17.** We are not concerned in the present case with mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In *Webster's Dictionary*, the word "inaccurate" has been defined as:
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> "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."
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> We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous.
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> **18.** We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(*c*) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate

> particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars.

11. Likewise in the case of ***Price Waterhouse Coopers Private Limited v. Commissioner of Income Tax Kolkata-1 and another (2012) 11 SCC 316,*** the Apex Court again held that the assessee had committed inadvertent and bona fide error and had not intended to attempt to either conceal its income or furnish inaccurate particular, hence, not liable to pay penalty under Section 271 (1) (c). The relevant paragraphs are reproduced as under:

> **14.** 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 40-A(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.
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> **15.** 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 one, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.
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> 16. 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."

12. The Division Bench of this Court in case of ***Dadabhoy's New Chirmiri Ponri Hill Colliery Company Pvt. Ltd. Vs. Commissioner of Sales Tax (2004) 2 STJ 2006 (MP)*** has examined the imposition of penalty on the assessee under Section 43 (1) of the M.P. General Sales Tax Act, 1958 read with Section 9(3) of the Central Sales Tax Act, 1956 and opined that when facts are disclosed in a return and are misstated, the raising of a legal plea of the exemption cannot make the return a false return within the meaning of Section 43(1).

13. Therefore, in view of the above discussion, the Appellate Tribunal of IT has not committed any error while setting aside the order passed by the Assessment Officer as well as CIT in respect of the imposition of penalty under Section 271 (1) (c). We do not find any substantial question of law involved in favour of the appellant hence the question of law No.1 is answered against the appellant and in favour of the respondent. So far as issue No.2 is concerned, as discussed above no case of imposition of penalty under Section 271(1) (c) for the assessment year 1992-93 is made out. ITA is accordingly, dismissed.

No order as to cost.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
J U D G E

Ravi- praveen