



**IN THE HIGH COURT OF KARNATAKA AT  
BENGALURU**

DATED THIS THE 3<sup>RD</sup> DAY OF MARCH 2015

PRESENT

**THE HON'BLE MR.JUSTICE VINEET SARAN**

**AND**

**THE HON'BLE MRS.JUSTICE S SUJATHA**

**ITA NO.297/2014**

BETWEEN

1. THE COMMISSIONER OF INCOME TAX  
C R BUILDING, QUEENS ROAD  
BANGALORE
2. THE DEPUTY COMMISSIONER OF INCOME-TAX  
CIRCLE-11(1)  
RASHTROTHANA BHAVAN  
NRUPATHUNGA ROAD  
BANGALORE 560 001

... APPELLANTS

(BY SRI K V ARAVIND, ADV.)

AND

M/S. ANKITA ELECTRONICS PVT LTD.,  
NO.7/4, ANKITA HOUSE  
MOUNT JOY ROAD, OPP. BULL TEMPLE  
HANUMANTHANAGAR  
BANGALORE 560019

... RESPONDENT

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME  
TAX ACT 1961, ARISING OUT OF ORDER DATED:14/02/2014

PASSED IN ITA NO.120/BANG/2013, FOR THE ASSESSMENT YEAR 2001-2002.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, *VINEET SARAN J.*, DELIVERED THE FOLLOWING:

### **JUDGMENT**

The question raised in this appeal is as to in what circumstances an issue involved would be considered as debatable and as to whether when the tax imposed on the assessee is under challenge and the appeal filed by the assessee against the assessment proceedings has been admitted by the High Court on the substantial question of law, still penalty can be imposed under Section 271(1)(c) of the Income Tax Act ?

2. This appeal has been filed by the Revenue challenging the order of the Tribunal, which has dismissed the appeal of the Revenue and the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for brevity) has been disallowed.

3. Brief facts of the case are :

The assessee is involved in the business of Computer consumables. For the assessment year 2001-2002, by order dated 26.03.2004 passed under Section 143(3) of the Act,

certain deductions claimed by the assessee towards salary paid to two lady Directors and to another person was disallowed, as well as another sum of Rs.26,00,000/- was disallowed under Section 68 of the Act, and also the interest given on the loans was disallowed (totaling amount to Rs.33,90,940/-). The disallowance was confirmed on merits by the Commissioner of Income Tax (Appeals). The appeal of the assessee before the Tribunal was also dismissed. The assessee then filed an appeal before the High Court, which has been admitted on 04.06.2012 (being ITA No.282/2011) on the following substantial questions of law:

- (A) *Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in law in upholding the action of the Learned Respondent under section 147 when the mandatory conditions for exercise of such powers did not exist and the action was barred by limitation of time?*
- (B) *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in holding that the appellant was barred from seeking reasons for reopening the assessment at the appellate stage when examination of such reasons is necessary for determining*

*the correctness or otherwise of initiation of proceedings under section 147?*

*(C) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in upholding the disallowance of Rs.60,000 in respect of remuneration paid to directors of the appellant Company by invoking section 40A(2) of the IT Act?*

*(D) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in upholding the disallowance of Rs.66,000 in respect of salary paid to Ms.Namratha G Patel?*

*(E) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in upholding the addition of Rs.26 lakhs treating the same as unexplained cash credits under section 68 of the Act?*

*(F) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in upholding the disallowance of Rs.3,64,940 in respect of interest paid to loan creditors?*

4. After the confirmation of disallowance by the Tribunal vide order dated 18.03.2011 with regard to the assessment made under Section 143(3) of the Act, the Assessing Authority initiated penalty proceedings on

27.11.2006 against the respondent-assessee under Section 271(1)(c) of the Act. Vide order dated 25.10.2011 penalty of Rs.13,42,000/- was levied for concealment of income. The appeal filed by the assessee challenging the order of penalty was allowed by the Commissioner of Income Tax (Appeals). Challenging the said order, the Revenue filed an appeal before the ITAT which has also been dismissed by order dated 14.02.2014. Aggrieved by the said orders, this appeal has been filed wherein a prayer has been made in deciding the following questions of law:

1. *Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the issues are debatable is correct and the penalty under Section 271(1)(c) is not exigible without appreciating that a mere admission of the appeal under section 260A by itself does not make the issues debatable ?*
2. *Whether on the facts and circumstances of the case, the Tribunal is right in law in relying on the Mumbai Tribunal order in the case of Nayan Builders & Developers P.Ltd. in ITA No.2379/Mumbai/2009 dated 18.03.2011 without*

*appreciating that the facts of the relied upon case are different and distinct from that of the present case?*

5. We have heard Sri K.V.Aravind, learned Counsel appearing for the appellants at length and appreciate the fairness with which he has presented the case and placed before us various decisions on the questions at hand.

6. While dismissing the appeal, the Tribunal has observed that the additions in respect of which penalty under Section 271(1)(c) of the Act was levied, have been admitted by the High Court for consideration and thus found that the additions made were debatable and would lead credence to the bonafides of the assessee. It thus held that the matter of imposing penalty under Section 271(1)(c) of the Act, was not exigible in the case on hand.

7. The Tribunal placed reliance on decision of the ITAT, Mumbai in the case of *Nayan Builders & Developers Pvt. Ltd.*, which had also held that “the admission of substantial questions of law by the High Court lends credence to the bona fides of the assessee in claiming deduction. Once it

turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty.”

8. The assessee in the present case had disclosed all the materials on which it was claiming deduction. The matter as to whether the deduction was to be given or not, was taken up by the revenue authorities and it was held that certain deductions claimed by the assessee were to be disallowed. It is not disputed that the questions regarding the disallowance of the deductions claimed by the assessee is under consideration by the High Court, as the appeal filed by the assessee has been admitted, on the substantial questions of law which have been reproduced hereinabove.

9. The mere admission of the appeal by the High Court on the substantial questions of law as have been quoted above, would make it apparent that the additions made were debatable. The Tribunal has thus rightly held that the

admission of substantial questions of law by the High Court leads credence to the bona fide of the assessee and therefore, the penalty is not exigible under Section 271(1)(c) of the Act. Merely because the claim of the assessee has been rejected by the revenue authorities would not make the assessee liable for penalty.

10. Learned Counsel for the appellants has vehemently argued that the question of concealment is a question of fact which has been determined by the Tribunal and as such, once such a question of fact has been so determined and finalized, the assessee would certainly be liable for payment of penalty.

11. The other submission of learned Counsel for the appellants is that inaccurate particulars were provided by the assessee in its return, and as such, on such ground the penalty proceedings have rightly been initiated.

12. The information supplied by the assessee in its return cannot be said to be concealment of any information. The facts that are borne out in this case are that the assessee

had provided certain particulars with regard to payment of salary and loans which had been taken by the Company from certain individuals. The questions as to whether the benefit of the payment of salary or the loans which were taken is to be given to the assessee has yet not been finalized, as on those very questions, the appeal filed by the assessee has been admitted by the High Court and the said questions are thus yet to be finally answered. In the aforesaid circumstances, there would always be a doubt in the mind of the assessee with regard to the correctness of the disallowance claimed by it.

13. Penalty can be imposed under Section 271(1)(c) of the Act for concealment of particulars of income or furnishing inaccurate particulars of such income. The extract of the relevant provisions of Section 271(1)(c) of the Act is reproduced below:

*“271(1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-*

*(a) xxxxxxx*

*(b) xxxxxxx*

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or*

*(d) xxxxxxx*

*he may direct that such person shall pay by way of penalty-”*

The relevant words ‘particulars’ and ‘inaccurate’ have been dealt with by the Apex Court at length in the case of *Commissioner of Income Tax -vs- Reliance Petroproducts (P) Ltd.* reported in *(2010) 322 ITR 158*, wherein it has been held that “Reading the words “inaccurate” and “particulars” 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.” It was held that “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.”

14. In the present case, the details of the claim were provided by the assessee. The question is as to whether on such details, deductions could be allowed or not is still in doubt. Such questions have been admitted for determination by the High Court in the appeal filed by the assessee. The

Apex Court in the aforesaid case of *Reliance Petroproducts (supra)* also held that “merely because the assessee had claimed the expenditure, which claim was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature”.

15. In view of the aforesaid decision, we do not find any good ground to differ with the view taken by the Tribunal and we are also of the opinion that no substantial question of law, as framed by the appellant in the appeal, requires determination by this Court.

16. As such, *the appeal stands dismissed*. No order as to costs.

SD/-  
JUDGE

SD/-  
JUDGE

JT/TL