

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI BEENA PILLAI, JUDICIAL MEMBER AND MS.  
PADMAVATHY S, ACCOUNTANT MEMBER**

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|---------------------------|
| ITA No.19/Bang/2020       |
| Assessment year : 2014-15 |

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| M/s. SLV Housing Development Corporation<br>No.1, Shri Krishna Mansion<br>Chunchaghatta Main Road<br>New Bank Colony<br>Konanakunte<br>Bangalore 560 062<br>PAN – ABAFS5822P | Vs. | ACIT<br>Central Circle 2(2)<br>Bangalore |
| APPELLANT  |     | RESPONDENT                               |

|             |   |                                     |
|-------------|---|-------------------------------------|
| Assessee by | : | Shri Arvind V Chavan, Advocate      |
| Revenue by  | : | Shri Shehnawaz Ul Rahaman Addl. CIT |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 13.04.2022 |
| Date of Pronouncement | : | 19.04.2022 |

**ORDER**

*Per Padmavathy S, Accountant Member*

This appeal is against the order of the Commissioner of Income Tax Appeals - 3 [CIT(A)] dated 29/11/2019 for the assessment year 2014-15.

2. The assessee raised the following Grounds of appeal -
  1. *Whether both the authorities were correct in holding that the levy of penalty u/s. 271(1)(C) of the IT Act was sustainable despite the explanation offered by the assessee was not found to be fault nor bonafide*
  2. *Both the authorities below rejected the reasonable explanation offered by the assessee that the assessee had not concealed any income and had declared the entire income and the addition made was due to mistake committed by the chartered accountant who had been engaged by the assessee and consequently there was no concealment*
  3. *Both the authorities committed an error in failing to appreciate that the mistake committed by the chartered accountant would be sufficient ground for not levy of penalty in view of the law declared by the Honorable Supreme Court in Price Waterhouse Coopers private limited vs CIT (2012) 348 ITR 306 (SC) and CIT vs Reliance Petro Products Private Limited (2010) 322 ITR 158 (SC)*
3. The assessee is a firm engaged in real estate business. The assessee has filed the return of income for assessment year 2014-15 on 30/11/2014 declaring total income of Rs.2,94,73,220. The case was selected for scrutiny and notice u/s. 143(2) dated 07/09/2015 was issued. Subsequently notice u/s. 142(1) was issued and served on the assessee requiring the assessee to furnish copy of computation of income, financial statements, tax audit report, the accounts and other details. The case was converted from limited scrutiny to complete

scrutiny with the approval of CIT. During the course of assessment proceedings the assessee has admitted to the errors in the computation of expenses, Work-in-progress and wrong classification of Assets and expenses. The assessee has recomputed the expenses and re-classified the assets and liabilities and submitted the new working along with tax audit report. As part of this excess expenses are reversed to the extent of Rs.77,75,425. The assessee has agreed for disallowance of the same. The AO verified the submissions of the assessee and disallowed the said expenses while passing the assessment order. The AO also initiated penalty proceedings u/s.271(1)(c) of the Act. Before the assessing officer the assessee submitted that the misclassification was an oversight. The assessee was under bonafide believe that the accounts were being maintained properly and upon coming to know of the negligence the assessee changed the auditors and prosecution proceedings have been initiated at ICAI against the chartered accountant.

4. The AO did not accept the contention of the assessee on the basis that assessee should be aware of the consequences of inaccurate particulars and concealment. The AO also stated that admitting the mistake merely 23 days before when the limitation period was due to expire to complete assessment cannot be held to be a reasonable cost and hence proceeded to levy penalty u/s.271(1)(c).

5. Aggrieved the assessee preferred an appeal before the CIT(A). Before the CIT(A) the assessee contended that the penalty proceedings u/s. 271(1)(c) is initiated without recording of satisfaction and that the voluntary admission of wrong claim of deduction by the assessee would not amount to furnishing of inaccurate particulars as contemplated u/s. 271(1)(c). The reason for the classification was due to oversight and mistakes were discovered only during Audit and the same was voluntarily offered to tax. The assessee further submitted that it was under a bonafide belief that the accounts were being maintained properly by the CA. The CIT appeals rejected the submissions of the assessee on the basis that the assessee had not got its accounts audited in a timely manner and the same was done only when the assessment proceedings were going to be concluded. The CIT(A) relied on the decision of Delhi High Court in the case of Commissioner of Income Tax vs Zoom Communications Private Limited (2010) 191 Taxman 179 (Delhi) and thereby confirmed the order of AO

6. Aggrieved by the order of the CIT(A) the assessee is in appeal before The Tribunal.

7. The Ld AR reiterated the submissions made before the lower authorities and submitted that the assessee was not aware of that the chartered accountant has not maintained the accounts properly and once he came to know of the same has initiated proceedings against

him. The Ld AR also submitted that furnishing of inaccurate details were due the wrong professional advise which the assessee conceded before the AO and paid tax on the same that would prove that that the intention of the assessee is not to conceal any income. The Ld AR drew our attention to the decision of the coordinate bench of the Tribunal in assessee's own case (ITA No.18/Bang/2020) where the penalty u/s.271B is deleted by the Hon'ble Tribunal on the grounds that the bad professional relationship with the auditors resulting in delay in filing the auditor report is a 'reasonable cause'. The Ld AR therefore prayed that the underlying issue in the present case also the same and hence the ratio of the decision of the coordinate bench in assessee's own case should be applied for the issue of levy of penalty u/s.271(1)(c) also.

8. The Ld DR supported the decision of the lower authorities.

9. We have heard the rival submissions and perused the material on record. Under Section 271(1)(c), two faults or omissions exposes the assessee to concealment penalty i.e. concealment of particulars of income and furnishing inaccurate particulars of such income. The assessee has admitted before the AO that the new auditor appointed, had pointed out certain mistakes in the expenses claimed by the assessee and submitted the revised computation correcting the wrong claim work-in-progress as expenditure. This fact is being confirmed by the AO in the assessment order. The assessee has filed a complaint

before the Institute of Chartered Accountants of India against the auditor who had filed the original return of income of the assessee. In our considered view, in the instant case, what has emerged is that the assessee, having realised that the expenditure claimed was not tenable as pointed out by the new auditors, offered the amounts expended to be added to the income and, accordingly, paid the requisite tax. This was not a case in our opinion, where, the assessee could be said to have either concealed particulars or furnished inaccurate particulars of the income. It was, essentially, a case, where, an untenable claim for deduction of work-in progress had been made and that too based on the advice of a professional, i.e., Chartered Accountant. The explanation to section 271(1) provides that the penalty under subsection (c) is leviable when the person fails to prove that the explanation of facts is bona fide. In assessee's case the wrong claim of the expenditure is not intentional and is based on a wrong professional advice. The fact that once the assessee is pointed out the error, the assessee has admitted the same before the AO and paid taxes is proof enough that there is no intentional concealment.

10. The coordinate bench of the Tribunal in assessee's own case (supra) has examined the claim of the assessee with regard to wrong professional advice and had deleted the penalty u/s.271B stating that it is a 'reasonable cause'. The assessee in the present appeal also contending the levy of penalty on the same premise that the assessee was under the bona fide belief that the accounts are maintained

properly by the auditor and that there is no intention to conceal the income. In our view therefore, the ratio laid down by the coordinate bench of the Tribunal is applicable in the present case of the assessee. The delay in furnishing the revised computation is also considered by the coordinate bench of the Tribunal where the Hon'ble Tribunal has taken cognizance of the fact that severing relationship with earlier CA might take time.

11. In view of the foregoing discussions, we are of the view that the claim of the expenditure by the assessee is bona fide and accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty levied u/s 271B(1)(c) for the year under consideration.

12. In the result, appeals of the assessee are allowed.

Order pronounced in court on 19<sup>th</sup> day of April, 2022

Sd/-

**(BEENA PILLAI)**  
Judicial Member

Sd/-

**( PADMAVATHY S)**  
Accountant Member

Bangalore,  
Dated, 19<sup>th</sup> April, 2022

Copy to:

1. The Applicant
2. The Respondent

3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.