ITAT deleted concealment penalty as retro-amendment merely transformed a valid expense into disallowable one

Summary – The Mumbai ITAT in a recent case of Deraj Agrotech Ltd., (the Assessee) held that Fringe Benefit Tax and prior period adjustment were not allowable deductions as per provisions of law; claims in regard to same fell under category of false claims, hence, provisions of section 271(1) (c) were attracted.

Facts

- Assessee-company was engaged in the business of providing consultation, advice, erection, commissioning and engineering work in the area of chemicals. Hydro carbons, agricultural products, horticulture fertilizers etc.
- The assessee filed its return of income showing business income at Rs.10.89 lakhs and after set off of carried forward business losses, the total income was declared at *NIL*.
- Assessing officer finalised the assessment determining the income of the assessee at Rs.15.37 lakhs. During the assessment proceedings Assessing Officer found that the assessee company had not disallowed the deferred tax, fringe benefit tax and prior year adjustment amounts debited to the Profit & Loss account.
- The assessee stated that these amounts were not offered for tax through an inadvertent error and that penalty proceedings should be dropped by taking a lenient view.
- The Assessing Officer held that the plea of the assessee that the default was committed through an inadvertent error was too general to be accepted as a reasonable and accordingly levied penalty of Rs. 2.25 lakhs under section 271(1)(*c*).
- On appeal, the First Appellate Authority held that assessee had given a lame excuse for the mistakes committed by it, that taking of a wrong base could not be termed as an inadvertent mistake, that the assessee had considered those very sums for calculation to be made under section 115JB, that there was no reason why same was not done for computing taxable income, that wrong claim, so basic and fundamental, could not be accepted as a reasonable cause while deciding the cases of concealment penalty. Finally, he held that the Assessing Officer was right in holding that penalty was leviable for furnishing of inaccurate particulars in terms of *Explanation* (1) to 271(1)(*c*).
- On further appeal:

Held

- From the orders of the Assessing Officer and the First Appellate Authority it is clear that the amounts in question; with regard to FBT and prior period adjustment; were not allowable deductions as per the provisions of law, that the assessee itself had admitted that not disallowing the said items was an inadvertent mistake. While computing the tax liability under section 115JB the

assessee had relied upon various judgments of the Tribunal and arrived at the conclusion that certain amounts were not to be considered while computing income under MAT provisions. It clearly shows and proves that the assessee company is well versed with the provisions and procedure of law. It is not a case of an assessee who is a small time player and is ignorant of tax laws. A knowledgeable corporate-assessee cannot be allowed to take shelter of inadvertent mistake. As far as question of deferred taxes is concerned, it is clear that at the time of assessment amount in question was deductible item and it was because of the retrospective amendment to the section that deferred taxes were to be disallowed.

- It is a very well known legal proposition that if an assessee claims any deduction he has to substantiate his claim by producing positive evidence. Act has provided certain deductions under the various heads of income and same can be claimed accordingly. There is fundamental difference in a debatable claim and a patently wrong or false claim. There have to be diverse opinions of courts about the claims made under the first category and where assessee can adopt one of the views. In such circumstances, one can say that issue has not reached finality and if assessee has opted for one of the possible views, he should not be visited by penal provisions. But, the claims made under the second category have no legs of their own to stand. Clearly, such claims are not tenable legally or factually. If a claim of deduction put forward by the assessee is not legally valid and results in evasion of taxes, provisions of section 271(1)(c) comes in picture. The phrase 'particulars of income' appearing in section 271(1)(c),has to be interpreted as facts leading to correct computation of income. So, it can be safely said that whenever any material fact, for correct computation of income, is not filed or if filed is inaccurate, then penalty has to be imposed. Perusal of the provisions of *Explanation* 1 to the section provide that such penalty can be imposed only if the person fails to offer an explanation or offers an explanation which is found by them to be false or offers an explanation which assessee is not able to substantiate and fails to prove such explanation is *bona fide* and all the facts relating to the same and material to computation of total income have been disclosed by him.
- If the facts of the case are considered in light of the above referred discussion it is clear that claim of deductions made by the assessee; with regard to FBT and prior period expenses; was not justified and claims falls in the category of false claim. As far as issue of deferred taxes is concerned, it had not filed any false claim. Penalty imposed/confirmed by the Assessing Officer/First Appellate Authority in respect of deferred taxes is deleted. Therefore, partly confirming the order of the First Appellate Authority the effective ground of appeal is decide in favour of the assessee company, in part.
- As a result, appeal filed by the assessee stands partly allowed.