*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ I.T.A. 804 OF 2011

Reserved on: 22nd March, 2013
% Date of Decision: 28th May, 2013

SHERVANI HOSPITALITIES LTD. ....APPELLANT
Through Mr. Ajay Vohra and Ms. Kavita Jha, Advocates.

Versus

COMMISSIONER OF INCOME TAX …RESPONDENT
Through Mr. Kamal Sawhney, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.

This appeal by the assessee which relates to the assessment year 2001-02, in effect impugns order dated 26th March, 2010, passed by the Income Tax Appellate Tribunal(tribunal for short) confirming imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (Act, for short). By order dated 19th December, 2011, the following substantial question of law was framed:-

> "Whether the Income Tax Appellate Tribunal was justified in upholding levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961?"

2. While framing the question of law, it was observed that the court was not framing any question on the issue of limitation as there is a

judgment of the Delhi High Court against the assessee, on the said aspect. It was observed that in case the judgment or ratio is reversed by the Supreme Court, the assessee would be at liberty to raise the said question at the time of hearing.

3. The assessee is a company engaged in hospitality services. For the assessment year 2001-02, the assessee filed its return declaring loss of Rs.43,15,328/-. The assessment was completed under Section 143(3) of the Act, vide order dated 27th February, 2004, at a positive income of Rs.9,26,510/-. The Assessing Officer made following additions/ disallowance in the quantum proceedings:

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S.No.	Particulars	Amount
1.	Loss of closure of South Extension Unit	Rs.25,37,521
2.	Capital Expenditure for interior designing	Rs.1,32,000
3.	Depreciation on assets purchased from M/s Star Hospitality	Rs. 3,03,433
4.	Donations	Rs. 10,494
5.	Loss of subsidiary Company	Rs.1,39,595

.."

4. In the first appeal, the assessee substantially succeeded and most of the additions/disallowances were deleted. After giving the first appeal effect, the loss was determined at Rs.34,30,680/- as against loss of Rs.43,15,328/-. Aggrieved, the Revenue preferred an appeal before the Tribunal, which was substantially allowed vide order dated 25th April, 2008. The 5 additions mentioned above were upheld by the Tribunal.

The order of the Tribunal in the quantum proceedings and the reasoning given in respect to additional Nos. 1 and 2 are noticed below. The net loss of the assessee was determined at Rs.4,57,726/-, vide second appeal effect order dated 17th July, 2008 passed under Sections 254/250 of the Act.

5. Proceedings under Section 271(1)(c) of the Act were initiated and vide order dated 29th January, 2009, penalty of Rs.16,44,330/- was imposed inter-alia observing that the assessee had failed to substantiate the explanation regarding additions/disallowances made in the assessment order resulting in reduction of returned loss. It was observed that the losses claimed could not be justified before the Assessing Officer and the additions had been finally upheld by the Tribunal. Concealment penalty was upheld in the first appeal by the Commissioner of Income Tax (Appeals). It was observed that looking at the facts of the case, the Assessing Officer had imposed minimum penalty @ 100% of tax payable on the amount concealed and not @ 300%.

6. On second appeal before the Tribunal, case law on the subject was referred to and it was observed that loss of Rs.1,39,595/- suffered by the subsidiary company upon liquidation claimed in the hands of the assessee was untenable in law because the subsidiary company was a separate taxable entity. The assessee had accepted that this was an error

or a mistake and it was pointed out that even in the quantum proceedings this claim was not pressed. However, the Tribunal observed, that this error cannot lead to quashing of the entire penalty. On the claim for donation, it was observed that the assessee had failed to file receipts of Delhi Fire Service for Rs.500/- and another/third receipt for Rs.4,995/-. Receipt of Rs.10,000/- issued by Hindustan Benevolent Trust was filed but the claim was restricted to 50% or Rs.5,000/-, instead of 100% deduction as claimed. The total income of the assessee having been computed at a loss, deduction under Section 80G could not be claimed. Further, the amount involved is small. Examining the claim for depreciation of assets of Star Hospitality Pvt. Ltd. which had closed its restaurant in Nepal, the Tribunal recorded that the assessee had produced the RBI permission to close the restaurant but there was no evidence to show and prove that the assets were brought to India and were utilized for the purpose of assessee's business. The said claim of Rs.3,03,433/- again is not substantial.

7. The real question pertains to the first two claims i.e. loss on closure of South Extension Unit of Rs.25,37,521/- and Capital Expenditure for interior designing of Rs.1,32,000/-. The two amounts are interconnected as the expenditure of interior designing was incurred on the South Extension Unit.

8. The respondent assessee had taken a premises on rent/lease in South Extension area in New Delhi in the very assessment year but the restaurant was closed and the operations stopped in the first year itself. The assessee had claimed that the expenditure incurred in the setting up the restaurant like flooring, civil and electrical works, alterations, repairing, wood work, fixtures and furniture etc. should be allowed as revenue loss. Disagreeing, the Tribunal in the quantum proceedings observed that the aforesaid loss was a capital loss and not a revenue loss for the following reasons:-

> "2.3 We have perused the records and considered the rival contentions carefully. The assessee during the year stated a new restaurant in which substantial capital investment had been made in the premises taken on lease. As the business was closed during the first year itself, the assessee after claiming the depreciation, claimed the balance amount of capital asset as deduction from the income which had been disallowed as a capital expenditure, by the A.O. the case of the assessee is that these assets could not be removed from the leased premises and there was, therefore, no salvage value. The Ld. A.R. for the assessee has placed reliance on the judgment of Hon'ble Supreme Court in case of Madras Auto Service (supra) and judgments of Hon'ble High Court of Delhi in case of Installment Supplies Pvt. Ltd. (supra). It has been held in these judgments that the assessee is not the owner of the assets created in the leased premises as it belongs to someone else. The assessee has only enduring business advantage and no advantage in the capital filed and therefore, the expenditure is to be allowed as revenue expenditure. On careful perusal, we find that both the judgments related to period prior to

Assessment year 1988-89 when Explanation (1) to Section 32(1) was not on the statute. As per the said explanation, capital expenditure on leased premises has to be capitalized and depreciation is allowable treating the assessee as deemed owner. Therefore, from Assessment year 1988-89, the capital expenditure in leased premises will have to be treated as capital expenditure, which is entitled for depreciation and cannot be allowed as revenue expenditure. The expenditure is undisputedly, capital in nature because it has resulted into addition to the profit making apparatus of the assessee and resulted into a new source of profit as the new restaurant was a new source of income. Therefore, even considering the judgments of Hon'ble Supreme Court in case of Empire Jute Co. (124 ITR 01) in which it has been held that expenditure incurred for efficient or more profitable working of the business has to be treated as revenue expenditure even if it provides some enduring advantage provided there is no addition to the profit making apparatus or the expenditure does not result into new source of income. Therefore, the expenditure in this case is no doubt a capital expenditure. However, the same was used for the purpose of business and, therefore, when it is sold or destroyed or discarded or demolished, the resulting loss has to be dealt with under the provisions of law. We find that there is a specific provision u/s 32(1)(iii) inserted w.e.f. Assessment year 1998-99 as per which if any asset used for the purpose of business on which depreciation has been claimed, is sold, discarded, demolished or destroyed in the previous year other than the previous year in which it was first brought into use, the difference between the sale/salvage value and the WDV has to be allowed as a business loss. This provision is not applicable in the case of assessee because the assets in this case have to be discarded in the very first year as the restaurant was not found viable. Therefore, in our view it is capital put by the assessee in the new business, which was lost and has, therefore, to be

> treated as loss of capital not allowable. This is not a case of loss occurring during the actual carrying on of the business, which can be allowed as business expenditure but a case of capital put into the new business being lost as the business not found viable. The expenditure has therefore, to be disallowed as a loss of capital. We order accordingly. The order of CIT(A) is reserved and the disallowance made by the AO is upheld."

9. The aforesaid reasoning itself discloses that two views were possible on whether or not the loss in question was revenue or capital in nature. Two earlier decisions of the Supreme Court in ***CIT vs. Madras Auto Service,****(1998)* 233 ITR 468 SC and ***Installment Supply Company vs. CIT*** (1984)149 ITR 52 were distinguished observing that they were inapplicable in view of introduction of Explanation 1 to Section 32(1) and Section 32(1)(iii) of the Act. The assessee had claimed that they had taken a premise on rent/lease and during the very first year of business itself the lease was surrendered. Therefore, no enduring business advantage accrued and no new profit making asset came into existence. Reliance placed by the assessee on ***Empire Jute Company v. Commissioner of Income Tax***, (1980) 124 ITR 01 was not accepted.

10. In the impugned order relating to penalty under Section 271(1)(c), the Tribunal has again adopted the said reasoning and has observed as under:-

> "In the appeal of the revenue to the tribunal, the Tribunal has categorically given a finding that the write off under the revenue head was not

permissible in view of the specific provision u/s 32(1)(iii) of the Act. The Tribunal has also categorically given a finding that the decision relied upon by the Ld. CIT(A) for deleting the disallowance relating to the period prior to the Assessment Year 1988-89 when the Explanation (1) to Section 32(1) was not on the statute. In the course of penalty proceedings, the assessee has mentioned that the claim was based upon some legal lines of reasoning and it cannot be said to be as absurd claim. When there is specific provision in the statute, and when the accounts of the assessee are under audit, non-application of a specific provision cannot give any leverage for bona fides to the assessee. Here even though the assessee has given an explanation in the penalty proceedings, the explanation as given by the assessee cannot be substantiated by any form of hair splitting or legal jugglery. Besides this, it is also noticed that the assessee has earlier mentioned that it had brought in plant & machinery of a value of Rs.3,12,956/- on the liquidation of Star Hospitality Pvt. Ltd., Nepal which machinery had been used in the Rodeo South Extension Restaurant. However the plant & machinery found to have been written of is of a value of Rs.47,166/-. How can this happen? What happened to the balance of plant & machinery? The assessee was able to bring back plant & machinery on the liquidation of subsidiary in Nepal as per their letter to RBI but on the closure of a unit in South Extension Delhi the assessee is not able to use the plant & machinery and has to abandon the same is too far fetched claim to substantiate any bona fide. Furniture and fixtures from Star Hospitalities Pvt. Ltd., Nepal is of a value of Rs.36,618/- while what is written of is Rs.19,978/-.

Coming to the issue of building on lease, the Ld. CIT(A) in the appellate order in the quantum proceedings has termed the same to include the partition and fixing of wooden fixtures, wooden floor, false ceiling, frame work, sanitary and

> drainage. In the letter addressed to the RBI in respect of bringing back the movable assets more specifically the letter dated 14.06.2002 an amount of Rs.9 lacs has been shown as wood/planks removed from the building on rent. If such items can be removed from the building on rent in Nepal and be used in Rodeo South Extension as claimed by the assessee, it shows that it lease such items were dismentable. Then how can it be said that the total amount shown under the building on lease had to be abandoned. Thus on all these counts the claim of the assessee lacks bonafides and consequently the explanation as given by the assessee being not substantiated, the penalty as levied by the A.O. and as confirmed by the Ld. CIT(A) is upheld."

11. Similar reasoning has been given with regard to expenditure incurred for interior designing i.e. Architect fee and it was observed that the expenditure, was in the nature of capital and not revenue expenditure. The expenditure was pre-commencement expenditure.

12. With reference to case law relied by the assessee, it was observed as under:

> "The decisions as quoted by the Ld. A.R. of Hon'ble Jurisdictional High Court and the coordinate benches of this Tribunal would not come to the rescue of the assessee in so far as in all those cases, it has been held that where there is difference of opinion for allowing or disallowing the expenditure between the assessee and the A.O., it cannot be said that the assessee had intention to conceal its income. In all those cases, the assessee had given all the particulars of expenditure and the income and had disclosed all the facts to the A.O. In the present assessee's case, the facts itself are missing. In the course of assessment proceedings, the A.O. has asked for evidences, have not been

> produced nor has the assessee been able to substantiate its claim even in the penalty proceedings or in the appellate proceedings. The assessee has not been able to even explain the circumstances in which it has claimed the expenditure which have been disallowed by the A.O. In these circumstances, the bona fides of the assessee have not been proved and we are of the view that the decision of the Hon'ble Jurisdictional High Court and the coordinate benches of this Tribunal has referred to by the assessee, do not help the assessee. In these circumstances, the appeal of the assessee is dismissed."

13. The short question is whether levy of penalty for concealment is as per law. Quantum and penalty proceedings are distinct and separate. Findings recorded in the quantum proceedings are germane and relevant but it does not follow that every addition justifies and compulsorily mandates imposition of penalty. Subject matter or the core question in the quantum or assessment proceedings is computation of correct income as per the Act and the subject matter of the penalty proceedings is the conduct of the assesse i.e. concealment or furnishing of inaccurate particulars which has resulted in additions in the quantum proceedings. Mens rea is not required or necessary to impose penalty for concealment but an assessee can escape penalty when he can show and establish that his case falls within four corners of the exclusion provided in Explanation 1 applicable to the said section. Section 271(1)(c) and the Explanation 1 read:-

"271. **Failure to furnish returns, comply with notices, concealment of income, etc.-(1)** If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty."

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"**Explanation 1**- Where in respect of any facts material to the computation of the total income of any person under this Act:-

(A) Such person falls to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is *bone fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

Then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

14. Thus penalty under Section 271(1)(c) is imposed when an assessee conceals his income or furnishes inaccurate particulars. In terms of the Explanation, we have to examine whether the case falls within the two limbs viz. sub-clause (A) or (B) and the effect thereof. Clause A applies when an assessee fails to furnish any explanation or when an explanation is found to be false. In respect of the two additions being examined, the assessee had furnished an explanation and the explanation has not been found to be factually incorrect or false. The fact that the expenditure was incurred and spent by the assessee is not disputed or denied but the claim of the assesee that it should be treated as revenue

expense has been held to be a wrong claim. It is a case where the assessee was not been able to substantiate the claim. The explanation given by him has not been accepted on legal grounds. Sub-clause (B) to the Explanation is applicable and we have to examine whether two conditions; (i) the assessee has been able to show his explanation was bona fide and (ii) he had furnished facts and material relating to the computation of his income had been disclosed. Onus on establishing that the assessee satisfies the two conditions is on him i.e. the assessee. We will examine the second condition first.

15. In the notes of accounts filed with the return, the assessee had made the following declaration:

> "4. The Rodeo restaurant situated at South Extension, New Delhi has been closed down with effect from 31 March 2001 on account of continuing poor financial health. Amount of deferred revenue expenses of Rs.7,73,984 carried in the Balance Sheet in respect of the Unit, which was to be written off over a period of five years as per the provisions of the Income Tax Act 1961 has been fully written off during the year.
>
> The restaurant unit was in rented building, hence the written down values as on 31st March 2001 of Building on Lease and few minor items of other assets amounting to Rs.25,37,521 has been shown as loss due to closure of unit."

16. This was in reference to the entry in the profit and loss account where under the head 'Expenditure' loss of wholly owned subsidiary and

closure of unit was specifically marked or indicated. The explanation as claimed also referred to note No. 4. Thus, the assessee in its return of income or the profit and loss account had not concealed and tried to camouflage the nature of loss that it was loss on account of wholly owned subsidiary and on closure of the unit. We say so with clarity and duly note that the assessee had come clean and had narrated and stated the facts and material. There is nothing in the penalty order or the appellate orders to negate the said admitted position. The second condition is thus satisfied.

17. The second aspect is whether the explanation or justification for the claim made by the assessee was bona fide. This requires examination of the merits of the claim and whether or not the claim made was bona fide i.e. had legal basis or foundation on which it could be made and was justified or was a mere pretense or make belief.

18. Whether or not expenditure incurred on renovation or improvement or repairs on the leasehold premises can be allowed and treated as revenue expenditure, has been elucidated in several cases. There are several cases in which the said claim has been allowed. It is the contention of the assessee that Explanation 1 to Section 32 of the Act applies to expenditure on property on lease or with right to occupy which otherwise is capital expenditure. Reliance is placed on ***CIT vs. EDC Electronic Data Systems Pvt. Ltd.*** *(2012) 211 Taxman 133 (Del),*

where the High Court has recorded that the Tribunal had accepted the plea of the assessee that the expenditure falling under the head 'current repairs' would be covered under the head 'revenue expenses'. The tribunal had observed that Explanation 1 to Section 32 would come into play when the expenditure otherwise was capital in the nature and depreciation had been claimed. We are not required to go into the correctness of the said view in the present case, but only notice that two views on the question were possible even after introduction of Explanation 1 to Section 32. We have noticed above that the Tribunal in the quantum proceedings has observed that earlier ratio expounded in Madras Auto Service (supra) and Installment Supply Co. (supra) was in favour of the assessee. We note that in the case of EDC Electronic Data Pvt. Ltd. (supra), the appeal filed by the Revenue was dismissed observing that the Tribunal had observed that the assessing Officer had partly allowed and permitted deduction to the extent of Rs.70 lacs approximately under Section 37 of the Act. The Tribunal had remitted the matter to the lower authorities to the extent of Rs.2.75 crores for re-examination. Similarly in ***CIT vs. Citi Financial Consumer Finance*** (2011) 335 ITR 29 (Del.), a Division Bench of this Court dismissed the appeal of the Revenue and treated expenditure of Rs.1.52 crores on leasehold improvements as revenue in nature and did not accept the plea of the Revenue that the expenditure should be capitalized. The

expenditure was incurred on civil work, laying cables, flooring, wall finishing etc. Earlier in ***CIT vs. Hi Line Pens (P) Ltd.*** [2008] 306 ITR 182 (Del.), another Division Bench of this Court made specific reference to Explanation 1 to Section 31(1) and Section 30(a)(i) and the word 'current repairs'. It was observed that the expenditure under the head 'current repairs' should be allowed as revenue deduction as by very nature tenancy right is for a limited period and does not create any asset. The question was answered in favour of the assessee and against the Revenue. In ***CIT vs. Escorts Finance Ltd.*** *(2006)* 205 CTR 574 (Del.), yet again expenditure incurred on carrying out repairs to make the premises workable, to replace glasses etc. was treated as a revenue expense. The expenditure included polishing of floor, wooden paneling etc. Reference in this regard may also be made to decisions of the Madras High Court and the Punjab and Haryana High Court in ***CIT vs. Ayesh Hospitals Pvt. Ltd.*** *2007* 292 ITR 266 (Mad.) and ***CIT vs. Porrits & Spencer (A) Ltd.*** (2002) 257 ITR 49 (P&H).

19. We have extensively referred to these judgments, only to show that the issue raised by the assessee was debatable and capable of two views. The assessee had an arguable case or had taken a bonafide plea. The assessee had given his explanation and categorically and clearly stated the true and full facts in the return itself. He did not try to camouflage or cover up the expenses claimed. It is not uncommon

and unusual for an assessee to bonafidely claim a particular expenditure as a revenue deduction and expense but not succeed. Every addition or disallowance made does not justify and mandate levy of penalty for concealment under Section 271(1)(c) of the Act. Levy of penalty is not an automatic consequence when an addition is made by disallowing an expense and by not accepting the interpretation given by the assesse. As stated above, the plea and contention raised by the assessee has to be examined before it is decided whether or not the assessee has been able to bring his case within the four corners of the Explanation.

20. Explanation 1 clearly stipulates that the penalty can be imposed when the details furnished by the assessee are found to be incorrect, erroneous and false. Merely making a claim which is held as not sustainable under law should not lead to penalization, when the assessee had furnished full details in the return itself and the claim is a debatable, reasonably plausible or may well have been accepted. (See ***CIT vs. Reliance Petro Product Pvt. Ltd.*** 2010 322 ITR 158 (SC), ***CIT vs. Dharampal Premchand Ltd.*** 2011 329 ITR 572 (Del.), ***CIT vs. Societex*** ITA No. 1190/2011 decided on 19.07.2012, by this Court). In ***Karan Raghav Exports vs. CIT*** (2012)349 ITR 112(Del.), it has been observed as under:-

> "14. On the second aspect, we record that a wrong deduction claimed can amount to furnishing of incorrect particulars. However, that is not the issue

in question. The issue in question is whether the appellant has been able to discharge the onus under Explanation 1 to Section 271 and show that the claim made by them or the explanation offered with regard to the claim made was bona fide and that the facts relating to the same and material for computation of the total income had been disclosed. These are two facets of clause (B) to Explanation 1. As far as disclosure of facts is concerned, this is clear from the note, which was attached with the return itself. We have quoted the relevant portion of the note above. Full and correct facts have been stated in the said note. The other question is whether the claim made was palpably wrong and legally untenable or a debatable and plausible claim on which the assessee did not succeed on legal interpretation. We have examined the nature of the claim made and the findings recorded by the High Court in their order dated 1st November, 2010. The claim made by the appellant may have been rejected, but it cannot be said that the same was not plausible or legally tenable. This aspect has been discussed above and it has been held that the claim made was bona fide. Regarding the legal opinion in writing, it is not mandatory for a person to obtain legal opinion in writing. Assessees do take legal opinion and in the present case the return of income was duly audited. Claim for depreciation is a technical claim based on interpretation of legal provision. Legal opinion, in such cases, is frequently given by Chartered Accountants to help the company to prepare its return of taxable income. In the present case, there is no allegation that the quantum of depreciation claim was incorrectly computed. The note itself indicates that it is written by a professional."

21. Similarly Delhi High Court in ***CIT vs. Zoom Communication Pvt. Ltd.*** (2010) 327 ITR 510 (Del.) has observed:

"The proposition of law which emerges from this case, when considered in the backdrop of the facts of the case before the court, is that so long as the assessee has not concealed any material fact or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty under section 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that he either substantiates the explanation offered by him or the explanation, even if not substantiated, is found to be bona fide. If the explanation is neither substantiated nor shown to be bona fide, Explanation 1 to section 271(1)(c) would come in to play and the assessee will be liable to for the prescribed penalty.

The assessee before us is a company which declared an income of Rs. 1,21,49,861 and accounts of which are mandatorily subjected to audit. It is not the case of the assessee that it was advised that the amount of income-tax paid by it could be claimed as arevenue expenditure. It is also not the case of the assessee that deduction of income-tax paid by it was a debatable issue. In fact, in view of the specific provisions contained in section 40(a)(ii) of the Act, no such advice could be given by an auditor or other tax expert. No such advice has been claimed by the assessee even with respect to the amount claimed as deduction on account of certain equipment having become useless and having been written off. As noticed earlier, the Tribunal was entirely wrong in saying that section 32(1)(iii) of the Act applies to such a deduction. It was not the contention before us that claiming of such a deduction under section 32(1)(iii) was a debatable issue on which there were two opinions prevailing at the relevant time. In fact, the assessee did not claim, either before the Assessing Officer or

> before the Commissioner of Income-tax (Appeals) that such a deduction was permissible under section 32(1)(iii) of the Act. No such contention on behalf of the assessee finds noted in the order of the Tribunal. Thus, it was the Tribunal which took the view that section 32(1)(iii) could be attracted to the deduction claimed by the assessee. It is also not the case of the assessee that it was under a bona fide belief that these two amounts could be claimed as revenue expenditure. The assessee, in fact, outrightly conceded before the Assessing Officer that these amounts could not have been claimed as revenue deductions. The only plea taken by the assessee before the income-tax authorities was that it was due to oversight that the amount of income-tax paid by the assessee as well as the amount claimed as deduction on account of certain equipment being written off could not be added back in the computation of income."

22. In ***Devsons Logistics Pvt. Ltd. vs. CIT*** (2010)329 ITR 483 (Del.), it has been held that when a question arises, which is debatable but the claim of the assessee is not finally accepted, penalty under Section 271(1)(c) should not be imposed. Divergent views on legal interpretation of tax provisions have been subject matter of plethora of decisions. It is not necessary that there should be uniformity or consistency of opinion on aspects of law and the assessee must accept interpretation against him, even when a favourable view is credible and tenable. Penalty cannot be imposed because assessee had taken a particular legal stand unless the assessee had not disclosed facts before the

department/authorities and is unable to establish his bonafides on the legal interpretation put forward.

23. Reference can also be made to ***CIT vs. Brahmputra Consortium Ltd.*** 2012 348 ITR 339 and ***Pramod Mittal vs. CIT*** ITA No. 67/2012 decided on 11th October, 2012 by the Delhi High Court.

24. Recently again, the Supreme Court in the case ***Price Water House Coopers Pvt. Ltd v. CIT (Supreme Court)*** (2012) 348 ITR 306 (SC) has observed as under:

> "…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. All that happened in the present case is that through a bona fide and inadvertent error 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 caliber 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, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income. Consequently, given the peculiar facts of this case, the imposition of penalty on the assessee is not justified."

25. In view of the aforesaid discussion, the question of law is answered in negative and in favour of the appellant assessee and it is held that penalty under section 271(1)(c) of the Act is not justified in respect of Rs. 25,37,521 and Rs.1,32,000/-. Penalty for concealment on

the said amounts is directed to be deleted. The appeal is disposed of. No costs.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 28th, 2013
Kkb/NA