2025:CGHC:16667-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 91 of 2024

{Arising out of order dated 14-12-2023 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur, in ITA No.2/RPR/2023}

Chhattisgarh State Power Transmission Company Limited, 2nd Floor, SLDC Building, CSEB Office, Raipur (C.G.) Pan: AADCC5773E

... Appellant

versus

DCIT Circle-1(1), Raipur, C.G.

... Respondent

For Appellant	:	Mr. Apurv Goyal and Mr. Nikhilesh Begani, Advocates.
For Respondent	:	Mr. Ajay Kumrani, Advocate on behalf of Mr. Amit Chaudhari, Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Deepak Kumar Tiwari, JJ.

Order On Board
(09/04/2025)

Sanjay K. Agrawal, J.

1. This tax appeal preferred under Section 260A of the Income Tax Act, 1961 (for short, 'the IT Act') was admitted for hearing

by formulating the following substantial question of law, on 1-5-2024:-

> "Whether in view of the voluntary disclosure of the income which is said to be feeding mistake, the imposition of penalty by the Assessing Officer under Section 271 (1) (c) of Income Tax Act, 1961 was correct?"

2. The assessee/appellant herein is a Public Limited Company and formulated under the provisions of the Electricity (Supply) Act, 1948. The appellant Company holds the status of a 'Government Company' under the provisions of Section 617 of the erstwhile Companies Act, 1956, now Section 2(45) of the Companies Act, 2013. The appellant Company/assessee is engaged in the business of providing/rendering extra high voltage power transmission services through its voltage power sub-stations (132 KV & above) and transmission lines throughout the State of Chhattisgarh. On 29-11-2016, the appellant filed its return of income for the assessment year 2016-17 declaring a total income of nil {after setting off the unabsorbed loss of ₹ 14.64 crores (approx.)}. Further, the book profits declared by the appellant in accordance with the provisions contained in Section 115JB of the IT Act 'Minimum Alternate Tax' (MAT) was to the extent of ₹ 26.90 crores

(approx.). On 1-12-2016, the statutory audit was completed by the Auditor appointed by the C&AG as required under the provisions of Section 143 of the Companies Act, 2013 certifying the net profit before tax at ₹ 3574.90 lakhs based on the Audited Financial Statements. The tax audit completed by the Auditor and the Tax Audit Report in Form No.3CA/3CD under Section 44AB of the IT Act was furnished online on 15-12-2016 reporting the net profit before tax at ₹ 3574.90 lakhs based on the Audited Financial Statements. On 26-3-2018, revised return of income was filed by the appellant on the basis of and accompanied by the tax audit report in Form Nos.3CA/3CD, audited annual financial statements and report of the auditor. The appellant declared a total income of nil {after setting off unabsorbed loss of ₹ 93.48 crores (approx.)}. Further, the book profits declared by the appellant in accordance with the provisions of Section 115JB of the IT Act 'Minimum Alternate Tax' (MAT) was to the extent of ₹ 26.90 crores (approx.). Finally, on 9-8-2018, the case of the appellant assessee was selected for scrutiny assessment by issuance of mandatory notice under Section 143(2) of the IT Act under CASS by the Assistant Commissioner of Income Tax, Circle-4(1), Raipur i.e. the Assessing Officer (AO) and statutory notices were issued

accordingly. On 23-10-2019, the appellant filed detailed response to the queries raised by the AO supported by documentary evidence. Ultimately, on 22-11-2019, during the course of assessment proceedings, the appellant vide reply dated 5-11-2019 (delivered to the AO by hand on 22-11-2019 and sent by mail on 21-11-2019), on its own volition, informed the AO about the difference in the figures of book profit for the purposes of computation of MAT under Section 115JB which was declared as ₹ 26,89,97,367/- instead of ₹ 35,74,90,033/- (total difference of ₹ 8,84,92,666/-) attributing the same to inadvertent data feeding mistakes in the return filed. However, vide reply dated 6-12-2019, on its own volition, the appellant/assessee returned the submission informing the AO about not disallowing the provision for gratuity while computing business income and accordingly, provided a revised computation of total income with revised income tax return form with corrected figures of book profit for the purposes of computation of MAT under Section 115JB of the IT Act. Ultimately, the Assessing Officer by its order dated 14-12-2019 passed assessment order under Section 143(3) of the IT Act acceding to the claim of the appellant to allow the revised figures of book profit, but she (AO) was of the view that the

appellant had not made true and correct disclosure and therefore penalty proceedings under Section 271(1)(c) of the IT Act were initiated against the appellant for furnishing inaccurate particulars of the income, which the appellant refuted and filed response stating that variation in the figure of book profit has occurred due to inadvertent data feeding mistake in the return of income hence, the penal proceedings initiated under Section 271(1)(c) of the IT Act be dropped.

3. By order dated 29-1-2022, the AO imposed a penalty of ₹ 2,72,92,117/- on the appellant under Section 271(1)(c) of the IT Act alleging that the appellant has tried to furnish inaccurate particulars of income and thereby sought to evade tax. Feeling aggrieved against the order imposing penalty dated 29-1-2022, the appellant filed appeal under Section 250 of the IT Act before the CIT (Appeals) in Form No.35 questioning the order of penalty holding that it was *bona fide* mistake and it has already been disclosed in reply dated 5-11-2019, delivered on 22-11-2019, and Tax Audit Report has already been filed in Form No.3CA/3CD conducted under Section 44AB of the IT Act on 15-12-2016 and later-on in the revised return of income filed on 26-3-2018 along with tax audit report, audited annual

financial statements and report of the auditor, and therefore the penalty order be set aside.

4. The CIT (Appeals) by order dated 15-11-2022, accepted the appeal of the appellant on merits thereby setting aside the penalty imposed against the addition of ₹ 8,84,92,855/- holding that mismatch in the figures of book profit was a case of feeding mistake and data transmission error and therefore there was no *mala fide* intention on the part of the appellant being a Government entity.

5. Questioning the order dated 15-11-2022, the Revenue preferred an appeal under Section 253 of the IT Act before the Income Tax Appellate Tribunal (ITAT) and cross-objection was also preferred by the appellant, however, ultimately, by the impugned order, the ITAT allowing the appeal of the Revenue has set aside the order dated 15-11-2022 passed by the CIT (Appeals) by restoring the order of penalty dated 29-1-2022 on account of variation in the book profit to the extent of ₹ 8.84 crores (approx.), which the appellant herein/assessee has called in question by way of the instant appeal.

6. Mr. Nikhilesh Begani, learned counsel appearing for the appellant/assessee, would submit that the appellant had

already furnished the tax audit report in Form No.3CA/3CD conducted under Section 44AB of the IT Act reporting the net profit before tax at ₹ 3574.90 lakhs, that too before initiating the assessment proceedings on 9-8-2018 and further, on 22-11-2019 while making submission reiterated the same on 6-12-2019, as such, there was *bona fide* act on the part of the appellant and it is only a data feeding mistake, therefore, would not fall within the mischief of Section 271(1)(c) of the IT Act and as such, the order of the ITAT deserves to be set aside and the order of the CIT (Appeals) be restored. Reliance has been placed upon the decisions of the Supreme Court in the matters of **Price Waterhouse Coopers Private Limited v. Commissioner of Income Tax, Kolkata-I and another**[1], **Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts Private Limited**[2] and **Sree Krishna Electricals v. State of Tamil Nadu and another**[3] to buttress his submission.

7. Mr. Ajay Kumrani, learned counsel appearing for the respondent/Revenue, would support the impugned order and submit that the ITAT is absolutely justified in upholding the penalty imposed upon the appellant/assessee which the

1 (2012) 11 SCC 316
2 (2010) 11 SCC 762
3 (2009) 11 SCC 687

appellant has not disclosed fairly and clearly by which the Assessing Officer has rightly imposed penalty under Section 271(1)(c) of the IT Act, as such, the appeal deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 271(1)(c) of the IT Act which states as under: -

> "**271. Failure to furnish returns, comply with notices, concealment of income, etc.**—(1) If the Assessing Officer or the Commissioner (Appeals) 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."

10. A careful perusal of the aforesaid provision would show that in order to be covered under the mischief of Section 271(1)(c) of the IT Act, there has to be concealment of the particulars of the income of the assessee or secondly, the assessee must have furnished inaccurate particulars of his income. Both the ingredients are independent to each other, if the assessee has

either concealed the particulars of his income or furnished inaccurate particulars of such income, penal provision under Section 271(1)(c) of the IT Act would attract for imposing penalty under Section 271(1)(c).

11. Section 271(1)(c) of the IT Act came up for consideration before the Supreme Court in **Price Waterhouse Coopers Private Limited** (supra) in which the tax audit report conducted under Section 44AB of the IT Act was filed along with the return and on that basis, their Lordships have held that once the tax audit report has been filed and 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. Their Lordships while setting aside the order imposing penalty, have pertinently observed in paragraphs 13, 14 and 15 of the report as under: -

> **"13.** Having heard the learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.
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> **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.

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."

12. Similarly, in **Reliance Petroproducts Private Limited's** case (supra), their Lordships have considered Section 271(1)(c) of the IT Act and also considered the words "particulars" and "inaccurate particulars" employed in Section 271(1)(c) and held as under: -

"10. ...

... As per *Law Lexicon*, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in Section 271(1)

(c) would embrace the meaning of the details of the claim made. ..."

* * *

13. ... It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars.

* * *

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:

> "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

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."

Further, their Lordships also considered that in case where there is no finding that any details furnished by the assessee in its return were found to be incorrect or erroneous or false, Section 271(1)(c) of the IT Act would not attract and observed as under: -

> **"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.
>
> **20.** We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or 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 the assessing officer for any reason, the assessee will invite penalty under Section 271(1)(*c*). That is clearly not the intendment of the legislature."

13. Finally, in **Sree Krishna Electricals** (supra), where penalty under the Tamil Nadu General Sales Tax Act, 1959, was imposed, their Lordships of the Supreme Court held that the authorities below had found that there were some incorrect statements made in the return, however, the said transactions were reflected in the accounts of the assessee, and observed as under: -

> "7. So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's accounts books. Where certain items which are not included in the

> turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption penalty cannot be imposed. The penalty levied stands set aside."

14. Reverting to the facts of the case in light of the aforesaid decisions of the Supreme Court, it is quite vivid that in the instant case, the assessee has uploaded the Tax Audit Report in Form No.3CA/3CD conducted under Section 44AB of the IT Act in the portal of the Income Tax Department reporting the net profit before tax at ₹ 3574.90 lakhs based on Audited Financial Statements and the Tax Audit Report was also filed along with its return of income on 26-3-2018 before the assessing authority i.e. prior to selection of the case of the appellant for scrutiny assessment on 9-8-2018 and further during the course of assessment proceedings, on 22-11-2019, the assessee, on its own volition, has clearly brought out about the difference in the figures of book profit for the purposes of computation of MAT under Section 115JB of the IT Act which was declared as ₹ 26,89,97,367/-, instead of ₹ 35,74,90,033/- (total difference of ₹ 8,84,92,666/-) attributing the same to inadvertent data feeding mistakes in the return filed and reiterated the same submission on 6-12-2019. As such, the correct book profit was not only shown in the Tax Audit Report, but it was duly

uploaded in the Income Tax Portal and filed before the Assessing Officer much prior to the case was undertaken for scrutiny assessment and also reported the same on 22-11-2019 while making submission and reiterated on 6-12-2019 as well, therefore, in our considered opinion, it is a case where the assessee came up fairly before the Assessing Officer correcting the error crept in while submitting the return and revised return that too before initiation of the scrutiny assessment proceedings. Even it is not the case of the Revenue that the appellant/assessee has concealed the income. Once the Tax Audit Report conducted under Section 44AB of the IT Act was filed and it was uploaded in the Income Tax Portal along with the return of income, there is no question of submission of any inaccurate particulars and no question of concealment of income by the appellant herein/assessee. While accepting the appeal of the appellant, the Commissioner of Income Tax (Appeals) has rightly deleted the penalty levied holding that the mismatch in the figures of book profit was a case of feeding mistake and data transmission error and there was no *mala fide* intention on the part of the appellant being a Government entity. As such, the order of the CIT (Appeals) could not have been interfered with by the ITAT only on the ground that in the

revised return correct figures were not made before the Assessing Officer. However, the fact remains that correct figures provided were not brought to the notice of the Assessing Officer while filing return and revised return and ultimately, on 22-11-2019, it is the appellant/assessee itself who brought correct figures on record informing the AO about the difference in the figures of book profit attributing the same to be inadvertent data feeding mistakes in the return filed, therefore, the assessee's case will not fall within the mischief of Section 271(1)(c) of the IT Act.

15. In that view of the matter, we are unable to sustain the order impugned passed by the ITAT over turning the order passed by the CIT (Appeals). Accordingly, the order dated 14-12-2023 passed by the ITAT is set aside and the order dated 15-11-2022 passed by the CIT (Appeals) is restored. The substantial question of law is answered in favour of the assessee and against the Revenue.

16. In the result, the tax appeal stands allowed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Deepak Kumar Tiwari)
JUDGE

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