HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 22802 OF 2022 (T-IT)

BETWEEN:

MR SRINIVASA GANDHI SAMPATH
AGED 50 YEARS
S/O SHRI SAMPATH
R/AT 206, SHOBHA QUARTZ,
SARJAPURA OUTER RING ROAD,
BELLANDUR, BANGALORE- 560103

ALSO AT R/O 34,
ARUM LILLY, 10TH STREET,
ER MOHAN NAGAR, KALAPATTI,
COIMBATORE- 641048

...PETITIONER

(BY SRI. SANDEEP HUILGOL., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER OF
   INCOME TAX, CIRCLE 5(3)(2)
   HMT BHAWAN NO.59
   BELLARY ROAD, GANGANAGAR
   BENGALURU- 560032

2. THE INCOME TAX OFFICER
   WARD 5(3)(4) BANGALORE NO.59,
   HMT BHAVAN, 4TH FLOOR BALLARI ROAD,
   GANGANAGAR, BENGALURU- 560032

3. THE PRINCIPAL COMMISSIONER
   COMMISSIONER OF INCOME TAX - 5,
   BANGALORE HMT BHAVAN, NO.59

4TH FLOOR, BELLARY ROAD
GANGANAGAR, BENGALURU- 560032

…RESPONDENTS

(BY SRI.E.I. SANMATHI, ADVOCATE)

THIS W.P. UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA IS FILED PRAYING TO-QUASH THE IMPUGNED PENALTY ORDER DTD 28.10.2022 BEARING DIN NO.ITBA/COM/F/17/2022-23/1046514465(1) PASSED BY THE R-1 UNDER SECTION 270A OF THE INCOME-TAX ACT, 1961, FOR AY 2017-18 VIDE ANNX-A1., AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following prayers:

> *"The Petitioner, therefore, most humbly prays that this Hon'ble Court may be pleased to issue a writ, order or direction:*
>
> *"(1) Quashing the impugned Penalty Order dated 28.10.2022 bearing DIN No.ITBA/COM/F/17/2022-23/1046514465(1) passed by the 1st Respondent under Section 270A of the Income-tax Act, 1961, for AY 2017-18 (Annexure 'A-1');*
>
> *(II) Quashing the Computation Sheet dated 28.10.2022 bearing DIN and Letter No.ITBA/COM/F/17/2022-23/1046516298(1) issued by the 1st Respondent under the*

provisions of the Income-tax Act, 1961, for AY 2017-18 (Annexure 'A-2');

(iii) Quashing the Notice of Demand dated 28.10.2022 bearing DIN and Letter No.ITBA/COM/F/17/2022-23/1046515027(1) issued by Respondent No.1 under Section 156 of the Income-tax Act, 1961, for AY year 2017-18 (Annexure 'A-3');

(iv) Restrain the Respondents from adjusting any refunds under Section 245 of the Income-tax Act, 1961, against the demand raised vide the Notice of Demand dated 28.10.2022 bearing DIN and Letter No.ITBA/COM/F/17/2022-23/1046515027(1) issued by Respondent No.1 under Section 156 of the Income-tax Act, 1961, for AY 2017-18 (Annexure 'A-3'); and

(v) Pass such order or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity."

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that in relation to the Assessment Year 2017-18, the petitioner has filed his Income Tax Returns in which he claimed deduction of Foreign Tax Credit

(FTC) in accordance with Section 128 of Income Tax Rules, 1962. In the said Income Tax Returns, the petitioner disclosed an income of Rs.10,78,13,430/-. In pursuance of the said returns, the respondents issued intimation under Section 143(1) of the Income Tax Act, 1961 dated 30.03.2019 as which the income tax deducted by the petitioner in his returns of income was equal to the income determined in the said intimation. In pursuance of the same, the respondents passed an Assessment Order and resultant Computation Sheet under Section 143(3) of the IT Act, dated 23.12.2019 in terms of which the income declared by the petitioner in his ITR and the income determined in the intimation was accepted without any variation.

4. Subsequently, the petitioner was issued a show cause notice dated 10.06.2021 under the National Faceless Assessment Center (NFAC) calling upon the petitioner to show cause as to why penalty

under Section 270A should not be imposed against the petitioner for alleged under-reporting of income. It is the grievance of the petitioner despite petitioner submitting detailed replies dated 14.06.2021 and 13.10.2022, the first respondent has proceeded to pass the impugned penalty order by invoking section 270A, aggrieved by the same, petitioner is before this Court by way of the present petition.

5. Learned counsel for the petitioner submits that perusal of the impugned order will indicate that necessary ingredients for invocation of Section 270A of the IT Act were completely absent and missing from the penalty proceedings initiated by the respondents. In this context, it is submitted that so long as the income tax returns disclosing/declaring income of the petitioner was accepted by the respondents without any demur and without making any variations to the same, the respondents are estopped from contending that there was

underreporting of income within the meaning of Section 270A of the IT Act, in the absence of which, penalty proceedings would not be maintainable and the same deserves to be quashed.

6. It is also submitted that erroneous claiming of credit by the petitioner could not have been made the basis to invoke penalty proceedings under Section 270A which is restricted to underreporting of income and misreporting of income by the petitioner and on this ground also impugned order deserves to be quashed.

7. Learned counsel for the petitioner places reliance upon the following judgment:

1) Commissioner of Income Tax, Ahmedabad vs. Reliance Petroproducts Private Limited, (2010) 11 SCC 762.

2) Principal Commissioner Of Income-Tax vs. Prafulbhai Vallabhdas Fuletra, (2023) 157 Taxmann.Com 754 (Gujrat), dated 26.09.2023

8. Per contra, learned counsel for the respondents submits that there is no merit in the petition and the same is liable to be dismissed. It is submitted that the present petition is not maintainable and liable to be dismissed particularly having regard to availability of equally efficacious and alternative remedy by way an appeal available in favour of the petitioner.

9. A perusal of the impugned order at Annexure-A1 will indicate that the sole ground on which the respondents seek to initiate penalty proceedings against the petitioner is by coming to the conclusion that there was underreporting of income as can be seen from the impugned order as hereunder:

"17. In view of above, it is held that the assessee is eligible to claim foreign tax credit relief on the foreign income of Rs.1,02.58,578/-

Income	*Income from outside India(Rs)*	*Tax paid outside India (Rs)*	*Tax Payable able in India(Rs)*	*Foreign tax Credit relief allowed (Rs.)*
Salary Income	*1,02,58,578*	*22,03,716*	*33,27,7477,*	*22,03,716*

18. After examination of the information furnished by the assessee, the assessment u/s 143(3) was completed on 23.12.2019 by considering foreign salary income at Rs. 1,02,58,578/- and allowing proportionate foreign tax credit relief to the extent of Rs 22,03,716/- as against the claim of Rs.68,27,699/- made by the assessee.

19. In the present case, the assessee has claimed excess foreign tax credit in the ROI filed and claimed refund from the TDS made by his employers, However, during the course of assessment proceedings, the assessee has admitted that the assessee had received salary income from his foreign employer M/s Apigee Corporation USA at Rs.1,02,58,578/- and foreign tax paid thereon is Rs.22,03,716/-. During the assessment proceedings, the assessee has once again suppressed the facts and made incorrect submissions stating that he had received US RSU income and stock compensation at Rs.7,90,80,912/- and paid tax thereon at Rs.46,32,982/-

20. On perusal of the information furnished and Form 16, it is seen that the assessee had been on the pay roll of Mis Apigee

Technologies (India) Pvt Ltd from 16.08.2016 to 20.11.2016 and received salary income in India for the services rendered in India as under

1. salary as per provisions contained in section 17(1) Rs.8.45,85.559/-
2. Value of perquisites under section 17(2) Rs.33.22.988/-

21. Further, it is seen from the Form 12BA that the assessee has received stock options amounting to Rs.33.22,988/- as against the claim of assessee at Rs.7,90,80,912/- mentioned in the submissions filed. The assessee has received this entire salary and perquisites totaling to Rs. 8,79,02,254/- from his Indian Employer in India for the services rendered in India. As per the Form 16 issued by M/s Apigee Technologies (India) Pvt Ltd. the entire salary income of Rs.8,79.02.254/- is taxable in India and assessee's employer has not reported any FTC relief or any part of the salary/perquisites paid outside India. The assessee's employer has shown tax payable in India on the salary income paid at Rs. 3,09,78.181/- and made TDS accordingly. It is incorrect on the part of the assessee to have received taxable salary income from his Indian employer in USA. The assessee has made incorrect claims in order to encash refund from the TDS made by his employers

22. On examination of the Form-16 furnished, it is seen that the assessee had been employed in MNCs, worked in India and abroad and received premium salary package. The employment status and salary package clearly indicates that the assessee is highly educated & qualified and employed at a responsible position in the company. The assessee might have taken the plea of ignorance of law or

misguidance by the tax consultant, the same would not have been considered in view of the education level and employment status of the assessee. This shows that the assessee is well aware while filing the ROI that claim of refund from the TDS made by his employers is incorrect.

23. It is seen that the assessee has made excess claim of FTC relief, which has resulted to reduction of his income tax liability and claimed refund with sole motive to evade the income tax and encash the refund by giving incorrect information/TDS made by his employers. By this act of the assessee, his total taxable income in India has reduced, which has amounted to underreporting of his total taxable income by misrepresenting the facts and claimed bogus refund from the prepaid taxes with cool calculation and with an eye on personal profit regardless of the consequences on the national economy and national interest."

10. In this context, it is pertinent to refer to Section 270A of the IT Act which reads as under:

"[270A. Penalty for under-reporting and misreporting of income.—

(1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liableto pay a penalty in addition to tax, if any, on the under-reported income.

(2) A person shall be considered to have under-reported his income, if—

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

(3) The amount of under-reported income shall be,—

(i) in a case where income has been assessed for the first time,—

(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;

(b) in a case where no return has been furnished,—

(A) the amount of income assessed, in the case of a company, firm or local authority; and
(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);

1. Ins. by Act 28 of 2016, s. 98 (w.e.f. 1-4-2017).772

(ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:

Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—(A — B) + (C — D)
where,
A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Explanation.—For the purposes of this section,—
(a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;

(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or

investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—

(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and

(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.773

(6) The under-reported income, for the purposes of this section, shall not include the following,
namely:—

(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;

(b) the amount of under-reported income determined on the basis of an estimate, if the accountsare correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals)or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(e) the amount of undisclosed income referred to in section 271AAB.

(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the

penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; and

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

(10) The tax payable in respect of the under-reported income shall be—

(a) where no return of income has been furnished and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;

(b) where the total income determined under clause (a) of sub-section (1) of section 143 or

assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;

(c) in any other case, determined in accordance with the formula— (X-Y)
where,

X = the amount of tax calculated on the under-reported income as increased by the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and

Y = the amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.

(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.]"

11. A plain reading of Section 270A(2)(a) will indicate that penalty proceedings under this provision

can be invoked and initiated only in the event of the petitioner being guilty of underreporting of income and merely because the petitioner had allegedly made excess claim of FTS relief, the necessary ingredients enabling/entitling the respondents to initiate penalty proceedings by invoking Section 270A would not arise in the facts and circumstances of the case.

12. In Reliance Petroproducts *supra*, the Apex Court has held that penal provisions/penalty proceedings, penal provisions have to be strictly construed and unless conditions under the Section 270(2)(a) (erstwhile Section 271(1)C)exist, penalty provisions cannot be invoked as against the assessee by holding as under:

> *1. Leave granted.*
>
> *2. The only question in this appeal which has been filed by the Commissioner of Income Tax-III is as to whether the respondent-assessee is liable to pay the penalty amounting to Rs.11,37,949/- under Section 271(1)(c) of the Income Tax Act (hereinafter referred to as "the Act") ordered by the Assessing Authority. The*

Commissioner of Income Tax (Appeals), however, deleted the said penalty. The order of the Commissioner (Appeals) was appealed against before the Income Tax Appellate Tribunal (hereinafter referred to "the Tribunal") which confirmed the order of the Commissioner (Appeals) and dismissed the appeal filed by the Revenue. However, the Revenue challenged the said order before the High Court which confirmed the orders passed by the Commissioner (Appeals) and the Tribunal while dismissing the Tax Appeal filed by the Revenue.

3. Few facts would be relevant.

4. The assessee is a company and the relevant Assessment Year is 2001-02.The Return was filed on 31.1.2001 declaring loss of Rs.26,54,554/-. This assessment was finalized under Section 143(3) of the Act on 25.11.2003 whereby the total income was determined at Rs.2,22,688/-. In this assessment the addition in respect of interest expenditure was made. Simultaneously penalty proceedings under Section 271(1)(c) of the Act were also initiated on account of concealment of income/furnishing of inaccurate particulars of income. The said expenditure was claimed by the assessee on the basis of expenditure made for paying the interest on the loans incurred by it by which amount the assessee purchased some IPL shares by way of its business policies. However, admittedly, the assessee did not earn any income by way of dividend from those shares. The company in its Return claimed disallowance of the amount of expenditure for Rs.28,77,242/- under Section 14A of the Act.

By way of response to the Show Cause Notice regarding the penalty in its reply dated

22.3.2006, the assessee claimed that all the details given in the Return were correct, there was no concealment of income, nor were any inaccurate particulars of such income furnished. It was pointed out that the disallowance made by the Assessing Authority in the Assessment Order under Section 143(3) of the Act were solely on account of different views taken on the same set of facts and, therefore, they could, at the most, be termed as difference of opinion but nothing to do with the concealment of income or furnishing of inaccurate particulars of such income. It was claimed that mere disallowance of the claim in the assessment proceedings could not be the sole basis for levying penalty under Section 271(1)(c) of the Act. It was submitted specifically that it was an investment company and in its own case for Assessment Year 2000-01 the Commissioner (Appeals) had deleted the disallowance of interest made by the Assessment Officer and the Tribunal has also confirmed the stand of the Commissioner (Appeals) for that year and, therefore, it was on the basis of this that the expenditure was claimed. It was further submitted that making a claim which is rejected would not make the assessee company liable under Section 271(1)(c) of the Act. It was again reiterated that there was absolutely no concealment, nor were any inaccurate particular ever submitted by the assessee-company.

6. Shri Bhattacharya, Learned ASG submits that Commissioner (Appeals), the Tribunal as well as the High Court have ignored the positive language of Section 271(1)(c) of the Act. He pointed out that the claim of the interest expenditure was totally without legal basis and was made with the malafide intentions. It was further pointed out that the

claim made for the interest expenditure was not accepted by the Assessing Authority nor by the Commissioner (Appeals) and, therefore, it was obvious that the claim for the interest expenditure did not have any basis. He further pointed out that the contention about the earlier claims being finalized was also not correct as the appeal was pending before the High Court against the order of the Tribunal for the year 2000-01. According to the Learned ASG, even otherwise, the expenditure on interest could not have been claimed in law, as under Section 36(1)(iii), only the amount of interest paid in respect of capital borrowed for the purposes of the business or profession could have been claimed and it was clear that the interest in the present case was not in respect of the capital borrowed. Our attention was also invited to Section 14A of the Act, which provides that no deduction could be allowed in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The Learned ASG also invited our attention to provision of Section 10(33) to show that the income arising from the transfer of a capital asset could not be reckoned as an income which can form the part of the total income. In short, the contention was that the assessee in this case had made a claim which was totally unacceptable in law and thereby had invited the provisions of Section 271(1)(c) of the Act and had, therefore, exposed itself to the penalty under that provision.

7. As against this, Learned Counsel appearing on behalf of the respondent pointed out that the language of Section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the

wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under:-

"271(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."

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. 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 the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty

of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:-

> *"13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."*

8. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff Vs. Joint Commissioner of Income Tax,

Mumbai & Anr. [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of Section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. 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. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. was upset. In Union of India Vs. Dharamendra Textile Processors (cited supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving

inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276-C of the Act. The basic reason why decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled by this Court in Union of India Vs. Dharamendra Textile Processors (cited supra), was that according to this Court the effect and difference between Section 271(1)(c) and Section 276-C of the Act was lost sight of in case of Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra). However, it must be pointed out that in Union of India Vs. Dharamendra Textile Processors (cited supra), no fault was found with the reasoning in the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra), where the Court explained the meaning of the terms "conceal" and inaccurate". It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled.

9. We are not concerned in the present case with the 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. 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 the inaccurate particulars.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an

exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income.

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 Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature.

11. In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu & Anr. [(2009) 23VST 249 (SC)] as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found 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. This Court, therefore, observed:

> *"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 account 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."*
>
> *The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.*
>
> *12. The Tribunal, as well as, the Commissioner of Income Tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the Revenue has no merits and is dismissed.*

13. In ***Prafulbhai Vallabhadas Fuletra***, *supra* the Division Bench Hon'ble High Court of Gujarat at paragraph No.4 has held as under:

> *"4.Reading of the order of the Tribunal could indicate that the Tribunal while confirming the order of the CIT(A) found that the conditions specified in Section 270A of the Act could not be invoked and so also regarding levy of penalty. The Tribunal noticed that the case is not covered under the provisions of Section 270A(2)(a) of the Act for the reason the income assessed and the income processed u/s. 143(1)(a) are same or in other words, income assessed was not greater than the income determined in return processed u/s. 143(1)(1) are same or in other words, income*

assessed was not greater than the income determined in return processed u/s. 143(1)(1) of the Act. As per provisions of section 270(3)(i)(a) of the Act as there was no difference between the amount of income assessed and amount of income determined u/s. 143(1)(a) of the Act, there was no case of under reporting of income as per provisions of section 270A(2)."

4.1 With regard to misreporting of income as per provisions of section 270A(9), the Tribunal observed that the case of the assessee does not fall in any of the clauses specified at (a to (f). Neither any misrepresentation of suppression of facts has occurred nor there was any false entries in the books of accounts as mentioned in various clauses of 270A(9) of the Act. During the year under consideration search was carried out at the premises of the third party where from on the basis of seized documents the assessee's on-money transactions were found. These transactions were duly offered for taxation by the assessee and his brother in their return of income filed u/s. 139 of IT Act. Since the return of income was not due as on the date of search carried out on 10.08.2016 and the accounting year was not ended also therefore the books of accounts were not up-dated. Therefore, the assessee's case does not fall under the category of misreporting of income.

4.2 The Tribunal therefore held that the provisions of Section 270A(9) are inapplicable as it is neither the case of misreporting of income nor the case of under reporting of income."

14. Insofar as the contention urged by the respondents that the petition is not maintainable on account of availability of equally efficacious and alternative remedy by way of an appeal is concerned, having regard to the finding recorded by me herein before, that the impugned proceedings are not only contrary to the provisions contained in Section 270A of the IT Act but also without jurisdiction or authority of law since the respondents would not be entitled to assume jurisdiction in the absence of the necessary ingredients of Section 270A having been satisfied, it cannot be said that availability of a remedy byway of an appeal would tantamount to taking away the jurisdiction of this Court under Article 226 of the Constitution of India and even this submission made on behalf of the respondents cannot be accepted.

15. As stated *supra*, Section 270A would be invocable only if there is underreporting of income or misreporting of income and the said provisions would

not apply in the instant case insofar petitioner is concerned, who is held to be guilty of availing the relief of excess FTC in respect of which allegation, Section 270A would not be invocable by the respondents and consequently, I am of the considered opinion that the impugned orders at Annexures A1, A2 and A3 deserve to be quashed.

16. In the result, I pass the following:

ORDER

i) The Writ Petition is allowed.

ii) The impugned Penalty Order at Anenxure-A1, impugned Computation Sheet at Annexure-A2 and Notice of Demand at Annexure- A3, all dated 28.10.2022 are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BSV/List No.: 2 Sl No.: 16