IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 512 OF 2003

M/s. Carona Limited,
A Public Limited Company,
Incorporated under The Companies Act, 1956
Having its registered Office at
New Udyaog Mandir Compound,
Mogal Lain, Mahim (W.)
Mumbai – 400 016. ***….Appellant***

: Versus :

1. Deputy Commissioner of Income Tax
Special range, 29, Mumbai
Having his office at Aaykar Bhavan,
M.K.Marg, Mumbai – 400 020.

2. Commissioner of Income Tax V,
Having his office at Aayakar Bhavan,
M. K. Marg, Mumbai – 400 020.

3. The Union of India Law Ministry,
Aayakar Bhavan, 2nd Floor,
M.K.Marg, Mumbai – 400 020. ***….Respondents***

Ms. Aarti Sathe *with Ms. Aasavari Kadam, for the Appellant.*

Ms. Shilpa Goel, *for the Respondent.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 12 JUNE 2025.

JUDGMENT PRONOUNCED ON : 20 JUNE 2025.

JUDGMENT : *(Per Sandeep V. Marne, J.)*

1) This Appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the **I.T. Act**) has been filed by the Assessee which pertains to the Assessment Year 1984-85. The Appeal is directed against the order dated 23 December 2002 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the **Tribunal**) by which an order passed by the Commissioner of Income Tax (Appeals) has been set aside and the order passed by the Assessing Officer imposing penalty of Rs.12,82,700/- on the Assessee under Section 271C of the I.T. Act has been restored.

2) The facts giving rise to filing of the Appeal, briefly stated, are that the Assessee is engaged in the business of manufacture and sale of footwear. The Assessee had filed the return of income for the Assessment Year 1984-85.

3) The Appeal was admitted on the following substantial question of law :-

> Whether on the facts and circumstances of the case, the ITAT was right in law in reversing CIT (A)'s orders and upholding the Income Tax Officer's order in imposing penalty on the Appellant u/s. 271 (1) (c) of the Income Tax Act, 1961?"

4) A demand was raised by its employees' union for increase in the bonus on 26 August 1983. A joint meeting of the representatives of the Trade Union and Assessee's Management was held with the Labour Minister on 25 October 1983. In pursuance of the said demand and meetings, it was decided on 2 November 1983 that till finalisation of quantum of bonus, the Assessee shall pay additional 2% bonus to the employees before Diwali. The final settlement with regard to bonus was

reached with the Union on 16 March 1984 and accordingly, additional bonus was paid to the employees. On 30 September 1985, the Assessee filed return of income declaring loss of Rs.77,92,340/-. On 31 July 1986, Assessee filed revised return of income marking it as 'Amnesty Return' thereby declaring positive income of Rs.60,93,750/-. The loss declared in the original return was converted into positive income by adding back unpaid sales tax liability of Rs.43,99,601/- and incremental gratuity liability of Rs.88,15,722/-. The Assessee however did not add back the amount of *ad-hoc* bonus and continued to claim exemption in respect of amount of Rs.22,21,123/- even under the Amnesty Return. The Assessing Officer issued noticed under Section 143(3) of the I.T. Act and accordingly, Assessee appeared before the Assessing Officer. The Assessing Officer passed order dated 23 February 1987 by adding back *inter-alia* the amount of *ad-hoc* bonus of Rs.22,21,123/- which was not offered by the Assessee for taxation in the Amnesty Return. In his order dated 23 February 1987, the Assessing Officer recorded a finding that the case was fit for attracting the provisions of Section 271(1)(c) of the I.T. Act for imposition of penalty on account of explanation of the Assessee in respect of the bonus amount not being found *bonafide*.

5) On the basis of the findings recorded by the Assessing Officer, Deputy Commissioner of Income Tax initiated proceedings against the Assessee under Section 271(1)(c) of the I.T. Act. The Assessee appeared before the Assessing Officer and submitted its response. By order dated 25 October 1993, the Assessing Officer imposed penalty of Rs.12,82,700/- on the Assessee under the provisions of Section 271(1)(c) of the I.T. Act.

6) The Assessee preferred Appeal before the Commissioner of Income Tax (Appeals) **[CIT(A)]** which came to be allowed by order

dated 28 June 1994, *inter-alia*, holding that the explanation offered by the Assessee for not offering *ad-hoc* bonus amount for taxation was plausible and the case did not fit into the purview of Section 271(1)(c) of the I.T. Act. The CIT (A) then accordingly set aside the penalty by allowing the Appeal vide order dated 28 June 1994. The Revenue preferred Appeal before the Income Tax Appellate Tribunal challenging the order of CIT (A). By judgment and order dated 23 December 2002, the Tribunal has proceeded to allow the Appeal preferred by the Revenue and has set aside the order of CIT (A) by upholding the order of the Assessing Officer. Aggrieved by the order dated 23 December 2002 passed by the Tribunal, the Assessee has preferred the present Appeal.

7) We have heard Ms. Sathe, the learned counsel appearing for the Appellant/Assessee in support of the Appeal. She would submit that the Tribunal has grossly erred in setting aside well-reasoned order passed by the CIT(A). That the case clearly falls outside the purview of Section 271(1)(c) of the I.T. Act. That the essential ingredients for maintaining a penalty order under Section 271(1)(c) of the I.T. Act are (i) concealment of particulars of income or (ii) furnishing of inaccurate particulars. That mere making of claim by an Assessee, which is ultimately found to be unacceptable, cannot *ipso-facto* amount to either concealment of income or furnishing of inaccurate particulars. That Assessee made *bonafide* claim and there is no finding in the orders passed by the Assessing Officer or the Tribunal that the claim was made by the Asssessee with *malafide* intentions.

8) Ms. Sathe, would further submit that Assessee *bonafidely* believed that under the mercantile accounting system, a business liability can be allowed for deduction for the year in which it has arisen

and accrued; and not when it is actually paid by the Assessee. That the liability for bonus in the present case had arisen on 26 August 1983 during the Accounting Year 1982-83 and that therefore the Assessee *bonafidely* believed that it was entitled to claim the said liability which had crystallised in the relevant Accounting Year. That mere actual payment towards such liability in subsequent Accounting Year does not disentitle the Assessee from claiming such liability in the year in which the same had got crystalized. In support of her contention, she would rely upon judgment of the Apex Court in ***Bharat Earth Movers Versus. Commissioner of Income Tax, Karnataka***[1].

9) In any case, according to Ms. Sathe, penalty under Section 271(1)(c) cannot be imposed unless the Assessing Officer arrives at a conclusion that there is concealment of income or particulars of income with *malafide* intention. In support, she would rely upon judgment of Punjab and Haryana High Court in ***The Principal Commissioner of Income Tax I, Chandigarh Versus. M/s. Torque Pharmaceuticals Pvt. Limited***[2]**.** In support of her contention that in absence of fulfillment of strict requirement under Section 271(1)(c) of the I.T. Act, penalty cannot be imposed, Mr. Sathe would rely upon judgment of the Apex Court in ***Commissioner of Income Tax, Ahmedabad Versus. Reliance Petroproducts Private Limited***[3]. She would accordingly pray for setting aside the order of the Tribunal and for restoration of order passed by the CIT(A).

10) The Appeal is opposed by Ms. Goel, the learned counsel appearing for the Respondent-Revenue. She would submit that the Tribunal has rightly set aside erroneous order passed by the CIT. That

[1] (2000) 6 SCC 645
[2] 2016 SCC OnLine P&H 7150
[3] (2010) 11 SCC 762

the Assessing Officer had recorded findings of deliberate concealment of income in order passed under Section 143(3) of the I.T. Act. She would rely upon provisions of Section 43B of the I.T. Act in support of her contention that deductions are admissible only in case of actual payment. That in the present case, the bonus was actually not paid in the relevant Accounting Year, but still the Assessee claimed deduction of amount of Rs.22,21,123/- towards unpaid bonus. That the concealment came to light only after proceedings were initiated under Section 143(3) of the I.T. Act. If such proceedings were not to be initiated, the Assessee would have continued with its *malafide* claim of deduction towards unpaid amount of bonus, which was never actually paid during the relevant accounting year. That therefore the Assessing Officer had rightly invoked the provisions of Section 271(1)(c) of the I.T. Act. Ms. Goel would also rely upon judgment of the Apex Court in ***CIT Versus. Reliance Petroproducts Pvt. Ltd.*** (supra) in support of her contention that the words '*inaccurate*' and '*particulars*' used in Section 271(1)(c) of the I.T. Act, when read in conjunction, would mean details supplied in Income Tax Return which are not accurate, exact, correct, truthful and are erroneous. That the claim of the Assessee about liability being crystalised in Assessment Year 1983-84 is totally baseless in the light of provisions of Section 43B of the I.T. Act, which provides for deduction only in the event of actual payment. She would rely upon judgment of Delhi High Court in ***Commissioner of Income-tax Versus. Zoom Communication P. Ltd.***[4] in support of her contention that incorrect claim without having any basis would attract penalty under Section 271(1)(c) of the I.T. Act. Ms. Goel would submit that all the ingredients of Section 271(1)(c) of the I.T. Act are fulfilled in the present case and that therefore the order passed by the Tribunal does not

[4] 2010 SCC OnLine Del 2088

warrant any interference in exercise of appellate jurisdiction of this Court.

11) Rival contentions of the parties now fall for our consideration.

12) The case arises out of Assessee's claim of deduction towards bonus for the Accounting Year 1982-83. According to the Assessee, liability for Rs.22,21,123/- towards payment of additional bonus got crystalised on 26 August 1983 when employees' union made demands and in any case on 25 October 1983 when demands were discussed in the meetings held with the Labour Minister and the liability got crystalized. That the settlement ultimately took place on 16 March 1984 and even though the actual payment of bonus was made in the subsequent Accounting Year, Assessee claimed deduction in respect of the amount of Rs.22,21,123/- in the Assessment Year 1984-85.

13) There is no dispute to the position that actual payment of Rs.22,21,123/- was not made by the Assessee-Company to its employees towards additional bonus in the relevant Accounting Year, which ended on 31 October 1983. The actual payment was made towards the additional bonus in the subsequent Accounting Year. The Revenue has relied on provisions of Section 43-B of the I.T. Act dealing with certain deductions only on actual payments. Section 43B provides thus :-

> **43B. Certain deductions to be only on actual payment.**
> Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—
> (a) any sum payable by the assessee by way of tax or duty under any law for the time being in force, or
> (b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

> shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.
>
> *Explanation*.—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*a*) or clause (*b*) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him,

14) It is by relying on provisions of Section 43B of the I.T. Act that the Assessing Officer proceeded to disallow the bonus claim of the Assessee and added the same in computation of its income. While passing the assessment order under Section 143(3) of the I.T. Act, the Assessing Officer made following observations against the Assessee :-

> The claim was made without giving any necessary particulars of the nature and date of accrual of the liability. The particulars have been discovered only after making necessary enquiries from the assessee. I further hold that but for making such enquiries the item of expenditure would have been wrongly claimed by the assessee and allowed as such. I therefore hold that the assessee had furnished inaccurate particulars of its income by claiming an item of expenditure which was not permissible as deduction under the provisions of the I.T. Act. As the assessee has not offered any explanation in writing it would be very difficult to comment whether the explanation if offered by the assessee would be bonafide. I further hold that the provisions of sec 271(1) (c) are attracted and proceedings are separately initiated in terms of explanation to sec. 271(1) (c) and the additional bonus claimed at Rs.22,21,123/- is disallowed and the same is added in the computation of income of the assessee.

15) Thereafter, the Assessing Officer initiated proceedings under Section 271(1)(c) of the I.T. Act for imposition of penalty against the Assessee. It would be relevant to refer to the provisions of Section 271(1)(c) of the I.T. Act dealing with failure to furnish returns, comply with notices, concealment of income etc. Under Section 271, if the

Assessing Officer is satisfied that the Assessee has committed any of the acts stipulated in Clauses-(b), (c) and (d) of sub-section (1) of Section 271, he is empowered to direct the Assessee to pay by way of penalty the amounts indicated in Clauses-(i) and (ii) of that sub-section. It would be apposite to reproduce relevant portion of Section 271(1) which reads thus :-

> **271. Failure to furnish returns, comply with notices, concealment of income, etc.**
> (1) If the Assessing Officer or the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—
>
> (a) [***]
>
> (b) ….
>
> (c) **has concealed the particulars of his income or furnished inaccurate particulars of such income, or**
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> (d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,
>
> he may direct that such person shall pay by way of penalty,—
>
> (i) [***]
>
> (ii) in the cases referred to in clause (*b*), in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure ;
>
> (iii) in the cases referred to in clause (*c*) or clause (*d*), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.
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> *(emphasis added)*

16) For the purpose of the present Appeal, provisions of Section 271(1)(c) are relevant which deal with concealment of particulars of income or furnishing inaccurate particulars of such income. Thus, *sine qua non* for invoking penalty provisions under Section 271(1)(c) is recording of satisfaction by the Assessing Officer that the Assessee has either –

(i) concealed the particulars of his income; or

(ii) there were inaccurate particulars of such income.

17) The Apex Court in ***Commissioner of Income Tax Versus. Reliance Petroproducts Private Limited*** (supra) has considered and interpreted the provisions of Section 271(1)(c) of the I.T. Act and has held as under :-

> **10.** Section 271(1)(*c*) is 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."
>
> **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 the 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 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.
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> **11. 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 words concerned.** 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 *CIT* v. *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* v. *Dharamendra Textile Processors* [(2008) 13

SCC 369] as also the decision in *Union of India* v. *Rajasthan Spg. & Wvg. Mills* [(2009) 13 SCC 448] and reiterated in para 13 that: (*Atul Mohan Bindal case* [(2009) 9 SCC 589] , SCC p. 597, para 13)

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

12. 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.**

13. In *Dilip N. Shroff* v. *CIT* [(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.

14. It was further held in *Dilip N. Shroff* [(2007) 6 SCC 329] 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.**

15. It was only on the point of mens rea that the judgment in *Dilip N. Shroff* v. *CIT* [(2007) 6 SCC 329] was upset. In *Union of India* v. *Dharamendra Textile Processors* [(2008) 13 SCC 369] 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 the Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful 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 the decision in *Dilip N. Shroff* v. *CIT* [(2007) 6 SCC 329] was overruled by this Court in *Union of*

> *India* v. *Dharamendra Textile Processors* [(2008) 13 SCC 369] 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 *Dilip N. Shroff* v. *CIT* [(2007) 6 SCC 329] .
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> *(emphasis and underlining supplied)*

18) The Apex Court has thus held that in order to expose the Assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. It is further held all the conditions under Section 271(1)(c) must exist before the penalty is imposed. It further held that the word 'particulars' used in Section 271(1)(c) would mean details of the claim made by the Assessee in the Return. The Apex Court held that in cases where a statement is made by the Assessee in the return is found to be incorrect, it can be held that the Assessee has furnished inaccurate particulars of the income. It is further held that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. It is also held that the element of *mens rea* is essential.

19) The issue for consideration here is whether the two ingredients of (i) concealment of particulars of income, or (ii) furnishing inaccurate particulars of income are made out for the purpose of attracting the provisions of Section 271(1)(c) of the I.T. Act. There is nothing on record to indicate that the Assessee made a wrongful claim of having actually paid any amount towards additional bonus to the employees in the relevant Accounting Year. On the contrary, the claim of the Assessee for deduction of amount of Rs. 22,21,123/- towards additional bonus was premised on statement that it was a future liability crystalised in the relevant year. Thus, the case does not involve making of any false statement by the Assessee. What is ultimately found to be incorrect is entitlement of the Assessee to claim deductions in respect of the amount which are yet to be actually paid in view of

provisions of Section 43B of the I.T. Act. The claim for additional bonus is disallowed on the ground that the amount was actually paid in the subsequent Accounting Year. In our view, the case does not involve making of any false statement by the Assessee and therefore the ratio of the Apex Court judgment in ***Commissioner of Income Tax Versus. Reliance Petroproducts Private Limited*** would squarely apply to the present case.

20) Ms. Goel has strenuously relied upon judgment of the Delhi High Court in ***Commissioner of Income-tax Versus. Zoom Communication P. Ltd.*** (supra) in support of her contention that even making of incorrect claim would be covered by the provisions of Section 271(1)(c) of the I.T. Act. The Division Bench of the Delhi High Court has held in para-20 of the judgment as under :-

> **20.** The court cannot overlook the fact that only a small percentage of the Income-tax returns are picked up for scrutiny. **If the assessee makes a claim which is not only <u>incorrect in law</u> but is also <u>wholly without any basis</u> and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271(1)(c) of the Act.** If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a licence to unscrupulous assessees to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self-assessment under section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. **The consequence would be that the persons who make claims of this nature, <u>actuated by a mala fide</u> intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny**. This would take away the deterrent effect, which these penalty provisions in the Act have.
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> *(emphasis and underlining supplied)*

21) The judgment of Co-ordinate Bench of Delhi High Court would not bind us but would have persuasive value while deciding the issue at hand. However, we find that the judgment has been rendered in the light of facts of that case. In case before the Delhi High Court, it was noticed during the course of scrutiny assessment, that a sum of Rs.1,21,49,861/- was wrongfully deducted by the Assessee under the head '*equipment written off*' and the Assessee claimed during the course of scrutiny of assessment that the same happened due to oversight and that the amount ought to have been actually adjusted in the block of assets. The amount was accordingly added back to the income of the Assessee in the scrutiny assessment. During the scrutiny assessment it was also noticed that another amount of Rs.1,00,000/- was wrongfully debited under the head '*Income-tax paid*' and again pretext of oversight was cited by the Assessee during scrutiny assessment. Upon initiation of penalty proceedings, Assessee took defence of *bonafide* mistake whereas the Assessing Officer arrived at the conclusion that there was no room for such mistake by a big company assisted by a team of tax auditors and that the case clearly involved concealment of income as well as of furnishing wrong particulars for computation of income. It is in the light of the above facts, that Division Bench of the Delhi High Court held that the Assessee made incorrect claim with *malafide* intention to evade tax. In our view, therefore the judgment of the Delhi High Court in ***Zoom Communication P. Ltd.*** would have no application to the facts of the present case, which does not involve making of any false statement, but involves the issue of only disallowance on account of interpretation of provisions of the I.T. Act.

22) The judgment of the Delhi High Court has also been considered by the Division Bench of Punjab and Haryana High Court in ***The Principal Commissioner of Income Tax I, Chandigarh Versus. M/s.***

Torque Pharmaceuticals Pvt. Ltd. (supra) in which it is held in paras-5, 6 and 7 of the judgment as under :-

> **5.** The primary challenge in this appeal is to the cancellation of penalty on addition made on account of disallowance of expenditure under section 40(a)(ia) of the Act. The assessee had made a claim of deduction in the return of income. No finding has been recorded by the authorities below that the claim made by the assessee is mala fide. It has been categorically recorded by the Tribunal after examining the entire material on record that the Commissioner of Income-tax (Appeals) had rightly cancelled the penalty against the assessee. It was further recorded that the assessee made a bona fide claim of deduction of the expenditure and even though it was not acceptable to the Revenue would not lead to the conclusion that the assessee had concealed the particulars of income or filed inaccurate particulars of income. The relevant findings recorded by the Tribunal read thus:
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> > "8. We have considered the rival submissions and material available on record. The issue involved in the appeal is regarding cancellation of penalty on addition made on account of disallowance of expenditure under section 40(a)(ia) of the Act. The assessee has disclosed the entire facts before the authorities below without concealing any income. The assessee made a claim of deduction in the return of income and explained the facts but the same were not accepted by the authorities below and additions have been confirmed. Therefore, it is a case of mere disallowance of expenditure without bringing any adequate material against the assessee to prove that the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. The appeal of the assessee on substantial question of law with regard to disallowance under the provision had been admitted by the hon'ble Punjab and Haryana High Court. The hon'ble Punjab and Haryana High Court in the case of CIT v. Haryana Warehousing Corporation (2009) 314 ITR 215 (P&H) held as under (headnote):
> >
> > > "Held, dismissing the appeal, that the deduction claimed by the assessee was legitimate and bona fide in terms of the conflicting determination of law on the proposition in question. The categorical finding at the hands of the Tribunal in its order was that the assessee had disclosed the entire facts without having concealed any income. There was no allegation against the assessee that it had furnished inaccurate particulars of its income. The determination of the Tribunal had not been controverted even in the grounds raised in the appeal. The assessee was guilty of neither of the two conditions. Therefore, in the absence of two pre-requisites postulated under section 271(1)(c) it was not open to the Revenue to inflict any penalty on the assessee."
> >
> > The learned Commissioner of Income-tax (Appeals) considering the material on record correctly followed the decision of the Delhi Bench in the case of AT and T Communications Services (India) Pvt. Limited (supra) for cancelling the penalty against the assessee. The assessee made a bona fide claim of deduction of the expenditure even though it was not acceptable to the Revenue, would not lead to inference that the assessee has concealed the particulars of income or filed inaccurate particulars of income. Nothing is brought on record if claim of

> assessee was incorrect in law or was mala fide. Therefore, decision relied upon by learned Departmental representative is not applicable to the facts of the case."
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> **6.** In CIT v. Reliance Petroproducts P. Ltd. (2010) 322 ITR 158 (SC) the apex court was of the view that under section 271(1)(c) of the Act, there has to be concealment of income of the assessee or the assessee must have furnished inaccurate particulars of his income. **In the present case, the claim made by the assessee has not been shown to be suffering from any of these conditions. In the absence of any finding recorded by the Commissioner of Income-tax (Appeals) or the Tribunal with regard to the claim of the assessee that it was mala fide, there is no error in cancelling the penalty imposed by the Assessing Officer.**
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> **7. Further, reliance of the Revenue on the judgment of the Delhi High Court in CIT v. Zoom Communication P. Ltd. (2010) 327 ITR 510 (Delhi) is of no help to them as therein the High Court was considering the question of levy of penalty under section 271(1)(c) of the Act wherein it had concluded to be a case of furnishing of inaccurate particulars of income with mala fide intention which is not the case herein.**
>
> *(emphasis supplied)*

23) The Punjab and Haryana High Court has distinguished the judgment in ***CIT Versus. Zoom Communication Ltd.*** holding that the case before the Delhi High Court involved furnishing of inaccurate particulars of income with a *malafide* intention. In the present case there is no finding of concealment of income with *malafide* intention.

24) The CIT(A) in his order dated 28 June 1994 had held that the explanation offered by the Assessee for claiming deduction towards additional amount of bonus was plausible one and could not be treated as false for the purpose of attracting provisions of Section 271(1)(c) of the I.T. Act. The CIT(A) held in para-6 of his order as under :-

> 6. I have carefully considered the facts of the case. The point to be decided in whether the appellant's claim towards additional bonus in its return amounted to either concealment of income or furnishing of inaccurate particulars. It is true that the claim of the appellant was disallowed by the A./O. and the said disallowance was upheld by the appellant authorities. **However, it cannot also be said that the explanation of the appellant was not plausible and at any rate the question of treating the said explanation as false does not arise.** It is

> also not a case that the appellant had furnished all the particulars in support of its claim, which was evident from the relevant notes in its Annual report. The claim was based on the understanding that the appellate had as to the admissibility of the said claim but it cannot be said at the same time that the appellant had no bonafide in entertaining such a claim. It is well settled that before a penalty can be imposed the entirity of circumstances must reasonably point to the conclusion that the appellant had consciously concealed the particulars of its income or furnished inaccurate particulars of its income. In view of this, I am inclined to delete the penalty.
>
> *(emphasis supplied)*

25) We are in agreement with the above findings recorded by the CIT(A) as the case involves raising of a *bonafide* claim by the Assessee that the crystallised liability towards additional bonus could have been claimed as deduction during the relevant year. Whether such claim is tenable in law or not is an altogether different issue. However by no stretch of imagination it can be held that the claim was raised with *malafide* intention of concealing the income.

26) Ms. Sathe has in fact attempted to justify that the claim towards unpaid additional bonus ought to have been allowed as deduction is law by relying on judgment of the Apex Court in ***Bharat Earth Movers*** (supra) in which it has held that the liability incurred by the assessee under the Leave Encashment Scheme could have been claimed as deduction in the Accounting Year in which the provision was made for liability. The Apex Court held in paras-4 and 7 as under :-

> **4.** The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.

> **7. Applying the abovesaid settled principles to the facts of the case at hand we are satisfied that the provision made by the appellant Company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the Company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary.**
>
> *(emphasis supplied)*

27) Though the view expressed by the Apex Court in ***Bharat Earth Movers*** may have been relevant for the purpose of challenging the Assessment Order passed by the Assessing Officer disallowing the bonus claimed by the Assessee of Rs.22,21,123/-, it appears that the Assessee has not assailed the said order and has apparently paid tax on the disallowed amount of Rs. 22,21,123/- towards bonus claim. What is however relevant to note is that the claim raised by the Assessee for claiming deduction in respect of the crystalised liability towards additional bonus was a plausible claim. Whether it could be sustained or not in the light of judgment of the Apex Court in ***Bharat Earth Movers*** is an altogether different issue. What is relevant to note is the position that the claim made by the Assessee can, by no stretch of imagination, be treated as *malafide* act of concealment of income so as to attract the provisions of Section 271(1)(c) of the I.T. Act.

28) In our view, therefore the ingredients of Section 271(1)(c) of the I.T. Act are not satisfied in the present case. The Tribunal has grossly erred in setting aside order passed by the CIT(A) by recording an unsustainable finding that the claim made by the Assessee was '*baseless*'. It would be relevant to reproduce the findings recorded by the Tribunal in para-9 of its order :-

> 9. We have carefully considered the submission and perused the record. During the course of hearing, we have repeatedly asked the learned Counsel on behalf of assessee to furnish the statement of total income and any other information furnished before the Assessing Officer along with the return of income in connection with the claim of additional bonus. However, the learned Counsel did not furnish any details and merely submitted that the description as given in page 3 of the Assessment order mentioned in the statement of total income. A careful perusal of the claim made by the assessee showed that the assessee has not given the date of settlement of the date of payment or the reason why the liability was claimed as deduction in this year, in spite of the fact that neither settlement nor the payment took place in this year. **Thus, it is a clear case of furnishing of inaccurate particulars of income.** Merely because the amount disallowed in this year was allowed in the next year it would not prove that in so far as this year is concerned there was no conscious effort to conceal the income of furnishing of inaccurate particulars of income. **The legal position that an additional bonus cannot be claimed as liability in an year in which neither settlement took place nor payment was made, is beyond dispute particularly when the additional bonus pertains to the earlier assessment years. Thus based on the well recognized principles of law, the assessee's claim of deduction in this year is completely baseless and in fact the claim was disallowed in the quantum proceedings and the said order was upheld by the ITAT.**
>
> *(emphasis supplied)*

29) Thus, the Tribunal itself has gone into the merits of the claim raised by the Assessee and laid down '*legal position*' that additional bonus cannot be claimed as a liability as the bonus was not actually paid to the employees in the relevant year. The Tribunal found the claim of the Assessee to be '*baseless'.* Mere raising of claim which has no basis, would not attract penalty provisions under Section 271(1)(c) of the I.T. Act. The Tribunal has recorded a finding that the case involves furnishing of inaccurate particulars of income. However for recording this findings, there ought to have been some material to indicate that any statement made in the return was false. It is not the case of the Revenue that the Assessee made claim of having actually paid the additional bonus during the relevant year. Assessee only raised the claim that the crystalized liability towards additional bonus could

be claimed towards deduction, which is later found to be inadmissible in law. Thus, the case does not involve making of any false statement in the return and therefore the finding of the Tribunal that there is inaccurate furnishing of particulars cannot be sustained.

30) The Assessee cannot be penalised for having raised a plausible claim. The essential ingredients of Section 271(1)(c) of the I.T. Act are not met with in the present case. The CIT (A) had rightly set aside the order of the Assessing Officer. The Tribunal has grossly erred in reversing the order of the CIT (A). For the aforementioned reasons, the substantial question of law is answered in the negative and in favour of the Assessee. In our view therefore, the order passed by the Tribunal is indefensible and liable to be set aside.

31) The Appeal accordingly succeeds. The order dated 23 December 2002 passed by the Tribunal is accordingly set aside and the order passed by CIT(A) on 28 June 1994 is confirmed. The Appeal is **allowed** in the above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]