

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri G Manjunatha, Accountant Member
& Shri Ravish Sood, Judicial Member

ITA No.747/Mum/2017
Assessment Year : 2010-11

ACIT 3(2)(2) Mumbai	Vs.	Pegasus Asset Reconstruction P Ltd. 54-55, 5 th floor, Free Press House, Free Press Journal Marg, Nariman Point, Mumbai 400 023.
(Appellant)		PAN AADCP3334Q (Respondent)

CO No.124/Mum/2018
(Arising out of ITA No.747/Mum/2017 for Assessment Year : 2010-11)

Pegasus Asset Reconstruction P Ltd. Mumbai 400 023	Vs.	ACIT 3(2)(2) Mumbai
PAN AADCP3334Q (Cross-Objector)		(Respondent)

ITA No.1019 & 1020/Mum/2017
(Assessment Years : 2012-13 & 2011-12)

Pegasus Asset Reconstruction P Ltd. Mumbai 400 023	Vs.	DCIT 3(2)(2)/ ACIT (OSD) Circle 3(2), Mumbai
PAN AADCP3334Q (Appellant)		(Respondent)

For the Revenue : Shri Rajat Mittal

For the assessee : Shri Haresh G Buch & Ms.Moksha Mehta

Date of Hearing :09.07.2018	Date of Pronouncement : 25.07.2018
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ORDER

Per G Manjunatha, Accountant Member:-

The captioned appeals, two appeals filed by the assessee for A.Ys 2011-12 and 2012-13 are directed against separate, but identical orders of the CIT(A)-8, Mumbai, dated 27.10.2018, and the appeal filed by the Revenue is against the order of the CIT(A)-8, Mumbai dated 20.10.2016 for A.Y. 2010-11. The assessee has also filed a cross-objection for A.Y. 2010-11. Since the appeals pertain to the same assessee and involve certain common issues, they were heard together and a consolidated order is being passed for the sake of convenience.

2. ITA No.1020 & 1019/Mum/2017

The assessee has more or less raised common grounds of appeal for both the assessment years. For the sake of brevity, the grounds of appeal for A.Y. 2012-13 are extracted below:

GROUND I

1. *The Hon'ble Commissioner of Income Tax (Appeals) - 8 ('CIT(A)') erred in confirming the action of the Deputy Commissioner of Income-tax, Circle 3(2)(2), Mumbai ("DCIT") in disallowing the revenue expenses amounting to Rs. 37,22,5637- incurred towards realisation of Non-Performing Assets ('NPA') on the ground that the same be treated as 'work-in-progress' with each NPA and can be claimed only when such NPAs are finally settled.*

2. *He failed to appreciate the fact and ought to have held that the expenses were of 'revenue' nature and were expended wholly or exclusively for the purpose of the business of the Appellant and that actual earning of income there from was not relevant.*

3. *The Appellant therefore prays that the DCIT be directed to delete the aforesaid disallowance."*

3. The brief facts of the case are that the assessee is engaged in the business of acquiring "Non-performing loans" from Banks and financial institutions and resolving them. The assessee has filed return of income for A.Y. 2012-13 on 29.09.2012 declaring total income at ₹ 12,55,49,530/- under normal provisions of the Act, and book profits of ₹ 11,38,98,488 u/s. 115JB of the Income Tax Act, 1961. The case was selected for scrutiny and statutory notices u/s. 143(2) and 143(1) of the Act, were issued and served on the assessee. In response to the notices, the AR for the assessee appeared from time to time and filed various details as called for. During the course of assessment proceedings, the Assessing Officer observed that the assessee has capitalized expenses incurred in relation to non-performing loans and added to it to the loan asset account in the books of account. However, such expenses which are in the nature of Revenue expenses have been claimed in the statement of total income. Therefore, the Assessing Officer called upon the assessee to explain as to why expenses claimed in the return of income relating to loans assets which are otherwise added to cost of assets in books of account should not be disallowed. In response, the assessee vide letter dated 13.03.2015, submitted that it is in the business of acquiring non-performing loans from banks and financial institutions and resolving. Accordingly, whatever expenses are incurred on particular non-performing loan is charged to that particular asset and capitalized in the books of account to be treated as stock in trade. Further, as and when the asset is realized, the same has been treated as income in its books of account. However, the expenditure are in the nature of revenue expenses incurred during a particular period has been claimed as revenue expenses in the statement of total income. The Assessing Officer after considering relevant submissions of the assessee observed that expenses incurred on loan assets were added to loan assets account as carrying cost instead of charging to profit and loss account, while expenses were added to cost of loan assets in the books of account has been treated as revenue expenses in the return of income filed without following matching principle of accounting, as per which whatever expenses incurred to earn income should be charged to profit and loss account as and when income is realized. Thus, Assessing Officer noted that the expenses incurred were not passed through profit and loss account, but directly credited to asset account in the nature

of work-in-progress account. He noted that as asset was not sold or transferred during the year, the expenses transferred to work-in-progress account cannot be allowed as deduction while computing income from business and, accordingly, disallowed ₹ 37,22,563/- and added it to the total income of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the first appellate authority. Before the CIT(A), the assessee has filed elaborate written submissions vide its letter dated 10.10.2016, which has been reproduced by the CIT(A) at para 4.1 at pages 6 to 20. The assessee also relied upon various case laws to justify treatment of its expenses in books of account as part of particular asset and treatment of said expenses as revenue in statement of total income. The learned CIT(A) after considering relevant submissions of the assessee and also by following the decision of ITAT Mumbai Bench, vide its order dated 30.10.2015, in assessee's own case for A.Ys. 2009-10 and 2010-11 in ITA Nos. 3123 & 6331/Mum/2013 confirmed the additions made by the Assessing Officer towards disallowance of expenses incurred on Non Performing Assets and capitalized in books of account, but claimed as revenue expenditure in statement of total income. The relevant portion of the order of CIT(A) is extracted below:

5.1.1 On the facts and circumstances of the case and In law, the Assessing Officer erred in disallowing the revenue expenses amounting to Rs.37.22,563/- as claimed by the Appellant on the alleged ground that the same are not debited to Profit and Loss Account and that there was no sale or transfer of assets in the year under consideration. He further erred in stating that these expenses cannot be allowed since they are directly added to cost of Loan Assets Account, which is in the nature of "work in progress" account.

5.1.2 I find that this issue has been decided by Hon'ble ITAT Mumbai in appellant's own case for AY 2009-10 & 2010-11 in ITA Nos. 3123 & 6331/Mum/2013 read with MA Nos. 308 & 309/Mum/2015. The relevant part of the order is reproduced below:

"5. After going through the rival submissions and the material before us we find that the business of the assessee involves acquiring NPAs from banks or financial institutions. These NPAs are loan amounts of various types of parties where loss is outstanding against the party and such party has also given certain assets as security to the bank/financial institutions. The

charge of such securities also comes to the assessee with NPAs. Either the NPA loan is recovered from the party and automatically the charge of the assts by which the loan was secured comes to an end. But generally such loans are bad accounts therefore assessee has to realize the money by disposing of the assets secured against such loan. Any profit or loss at the end of the entire process of recovery and disposing of the assets is charged/credited to the Profit & Loss Account. This is a long drawn process and may involve a few years. There is uncertainty about the amount to be realized and the period during which it would be realized. In view of assessee wants to claim the expenses relating to recovery and maintaining of such NPAs to Profit & Loss Account as revenue expenditure. Assessee has practical difficulties in valuing such NPAs because it is not certain as to how much will be the realization and when. It may be difficult to even partially realize the revenue or determine the profit. Therefore, the assessee is not crediting Profit & Loss Account with recovery as and when made whereas that is transferred to NPA A/c. and only at the end, net profit or loss is transferred to the Profit & Loss Account. Therefore the expenditure incurred during the recovery process relates to the recoveries which are to be accounted for in the NPA account either in this year or in future whenever the recoveries are made. Therefore, as per matching principle of accountancy they are not matching with the revenue realized before the NPA is settled. Such expenditure should be treated as work-in-progress with each NPA and transferred to Profit & Loss Account only when the NPA is finally settled. Accordingly CIT(A) was justified in rejecting the claim of the assessee on this account. This reasoned findings of the CIT(A) need no interference from our side because such expenses should be treated as work-in-progress with each NPA and transferred to Profit & Loss Account only when the NPA is finally settled. Accordingly the appeal filed by the assessee is dismissed."

5.1.3 Since the facts and circumstances relating to this issue have remained unchanged for the instant assessment year, respectfully following the decision of Hon'ble Mumbai ITAT cited above, the disallowance of Rs.37,22,563/- made by the Assessing Officer is upheld and this ground of appeal is dismissed.

DISMISSED"

5. The learned AR for the assessee, at the time of hearing submitted that the issue involved in this appeal is covered against the assessee by the decision of the ITAT A.Ys. 2009-10 and 2010-11 in ITA Nos. 3123 & 6331/Mum/2013, wherein the

Tribunal held that expenditure incurred on NPA's capitalized in books of account and treated as work-in-progress shall not be allowed as revenue expenditure in the statement of total income.

6. The learned DR, also submitted that the issue is covered against the assessee by the decision of the Tribunal in its own case for A.Ys. 2009-10 and 2010-11 in ITA Nos. 3123 & 6331/Mum/2013

7. We have heard both the parties and perused the material on record. The co-ordinate Bench of ITAT Mumbai Bench 'C' in assessee's own case for A.Ys. 2009-10 and 2010-11 in ITA Nos. 3123 & 6331/Mum/2013 has deliberated the issue at length and after considering relevant facts held that expenses incurred on NPA's and treated as part of asset in the books of account cannot be treated as revenue expenditure in statement of total income as the same is not meeting the matching principles of accountancy. The relevant portion of the order is extracted below:

"5. After going through the rival submissions and the material before us we find that the business of the assessee involves acquiring NPAs from banks or financial institutions. These NPAs are loan amounts of various types of parties where loss is outstanding against the party and such party has also given certain assets as security to the bank/ financial institutions. The charge of such securities also comes to the assessee with NPAs. Either the NPA loan is recovered from the party and automatically the charge of the assts by which the loan was secured comes to an end. But generally such loans are bad accounts therefore assessee has to realize the money by disposing of the assets secured against such loan. Any profit or loss at the end of the entire process of recovery and disposing of the assets is charged/credited to the Profit & Loss Account. This is a long drawn process and may involve a few years. There is uncertainty about the amount to be realized and the period during which it would be realized. In view of this the assessee wants to claim the expenses relating to recovery and maintaining of such NPAs to Profit & Loss Account as revenue expenditure. Assessee has practical difficulties in valuing such NPAs because it is not certain as to how much will be the realization and when. It may be difficult to even partially realize the revenue or determine the profit. Therefore the assessee is not crediting Profit & Loss Account with recovery as and when made whereas that is transferred to NPA A/c. and only at the end, net profit or loss is transferred to the Profit & Loss Account. Therefore the expenditure incurred during the recovery process relates to the recoveries which are to be accounted for in the NPA account either in this year or in future whenever the recoveries are made. Therefore, as per matching principle

of accountancy they are not matching with the revenue realized before the NPA is settled. Such expenditure should be treated as work-in-progress with each NPA and transferred to Profit & Loss Account only when the NPA is finally settled. Accordingly CIT(A) was justified in rejecting the claim of the assessee on this account. This reasoned findings of the CIT(A) need no interference from our side because such expenses should be treated as work-in-progress with each NPA and transferred to Profit & Loss Account only when the NPA is finally settled. Accordingly the appeal filed by the assessee is dismissed."

In this view of the matter and being consistent with the view taken by the co-ordinate Bench in assessee's own case for earlier years, we are of the view that the CIT(A) was right in confirming the additions made by the Assessing Officer towards disallowance of expenditure incurred on NPA and treated as cost of such assets in books of account but claimed as revenue expenditure in statement of total income. Hence, we are inclined to uphold the finding of the CIT(A) and dismiss the appeal of the assessee for A.Y. 2012-13.

8. The facts and issues involved in ITA No. 1020/Mum/2017 for A.Y. 2011-12 are identical to the issue discussed in ITA No. 1019/Mum/2017 above. The reasons given by us in the preceding paragraphs shall mutatis mutandis apply to this appeal. Therefore, for the similar reasons, we uphold the findings of the CIT(A) and dismiss the appeal filed by the assessee for A.Y. 2011-12 also.

9. We shall now take up ITA No. 747/Mum/2017 & Co NO. 124/Mum/2018.

The appeal filed by the Revenue is directed against the order of CIT(A)-8, Mumbai, for A.Y. 2010-11, deleting penalty levied u/s. 271(1)(c) of the Income tax Act, 1961. The Revenue has raised the following Grounds of appeal:

"1. Whether on the facts and circumstances and in law, the Ld.CIT (A) was right in deleting the penalty of Rs.31,76,752/- levied u/s 271(1) (c) of the IT. Act, 1961 without appreciating the fact that the same was imposed on inadmissible claim in the computation of income of expenses related to loan assets and hence, a clear case of filing of inaccurate particulars of income.

2. Whether on the facts and circumstances and in law, the Ld. CIT (A) was right in deleting the penalty of Rs.31,76,752/- levied u/s

271(1)(c) of the I.T. Act, 1961 without appreciating the fact that the disallowance of expenses is upheld by the Hon'ble ITAT which is evidence enough that the assessee has failed to declare its true income and the claim made is not only incorrect in law but is also wholly without any basis and the explanation furnished by assessee for making such a claim is not found to be bona fide; triggering Explanation 1 to section 271(1) (c) of the I.T. Act 1961 as held by Hon'ble Supreme Court in the case of MAKData Pvt. Ltd. v/s. CIT (2013), 358 ITR 593 (SC) and Hon'ble Delhi High Court in the case of Zoom Communications Pvt. Ltd. 40 DTR 249 (2010).

3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

10. The brief facts of the case are that, in this case the assessment was completed u/s. 143(3) on 24.12.2012 determining total income at ₹ 4,14,23,101/- by making additions towards disallowance of expenses incurred on loan assets and added as carrying cost to loan assets but claimed as revenue expenses in statement of total income for ₹ 93,46,138/-. Thereafter, the Assessing Officer initiated penalty proceedings u/s. 271(1)(c) for furnishing inaccurate particulars of income and, hence, called upon the assessee as to why penalty should not be levied u/s. 271(1)(c) of the Act. In response to notice, the assessee vide letter dated 06.12.2015, submitted that it has preferred appeal against order of the Assessing Officer before the ITAT and the appeal filed by it is pending for adjudication, therefore, till such appeal is disposed of by the ITAT, penalty proceedings may be kept in abeyance. The assessee also reiterated its submissions with regard to additions made by the Assessing Officer to argue that mere disallowance of expenses cannot be considered as furnishing of inaccurate particulars of income when assessee has filed complete details of expenses in the return of income filed for the relevant assessment year. The learned Assessing Officer after considering the relevant submissions of the assessee observed that the assessee has claimed expenses incurred on loan asset and treated it as carrying cost in the books of account and as revenue in nature in the statement of total income without routing it through the profit & loss account. He, therefore, opined that the assessee has furnished inaccurate particulars of income in respect of claim of expenses and, hence, levied penalty of ₹ 31,76,752 u/s. 271(1)(c) of the Income tax Act, 1961. Aggrieved by the penalty order, the assessee preferred appeal before the CIT(A).

11. Before the CIT(A) the assessee has filed elaborate written submissions, which has been reproduced at para 4.1 at page nos. 3 to 10 of the learned CIT(A)'s order. The sum and substance of the arguments of the assessee before the CIT(A) are that it has furnished complete details of expenses claimed in the return of income filed for the year by way of notes to account, explaining treatment of expenses in the books of account and claim made in return of income, treating same as Revenue in nature. Therefore, merely for the reason that the Assessing Officer has not accepted the claim of expenses would not be a reason for levying penalty for furnishing inaccurate particulars of income. The assessee has further submitted that the issue of expenses incurred on NPA and treated as cost of asset in books of account but claimed as revenue in nature in the statement of total income, is a debatable issue, which involves two possible views. Therefore, merely for the reason that the Assessing Officer has not accepted the view taken by the assessee would not entitle him to levy penalty for furnishing of inaccurate particulars of income. In this regard, he relied upon various judicial precedents including the judgment of Hon'ble Supreme Court in the case of Reliance Petro Products (322 ITR 158).

12. The learned CIT(A), after considering the relevant submissions of the assessee and following the decision of Hon'ble Supreme Court in the case of Reliance Petro Products (supra), as also the decision of Hon'ble Bombay High Court in the case of CIT vs. Aditya Birla Novo Ltd. (Income Tax Appeal No. 3899 of 2010) observed that the tenets for determining the concealment or furnishing of inaccurate particulars of income have been laid down in the above judgments, as per which the facts of the assessee's case are covered by the principles laid down by the apex court in the case of Reliance Petro Products. Hence, the Assessing Officer erred in levying penalty in respect of disallowance of expenses for alleged furnishing of inaccurate particulars of income. Accordingly, he directed the Assessing Officer to delete the penalty levied u/s. 271(1)(c) of the Act. The relevant portion of the order of CIT(A) is extracted below:

5.2.1 These ground pertains to levy of penalty of u/s 271 (1)(c) of the Act. I have gone through the facts of the case, assessment order, penalty order and the contentions of the appellant.

5.1.2 In the instant case I find that the issue on which the additions had been made by the A.O. in his order under section 143(3) of the Act, formed part of the appellant's accounts and was shown in computation of income as well as in the balance sheet. The additions have been made only due to the A.O. giving different treatment to claims made by the appellant. In fact, appellant's claim has been disallowed by the A.O. on the basis of details and information made available by the appellant itself. The amount in contention has also not been disputed anywhere. The A.O. has imposed penalty under section 271(1)(c) of the Act on the premise that the quantum addition has been confirmed by CIT(A).

5.2.3 It is a settled legal position that mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. The expression 'furnishing of inaccurate particulars of income' has also not been defined in the Act. The expression 'inaccurate', in ordinary parlance refers to 'not in conformity with the fact or truth' and that is the meaning which is relevant in the context of 'furnishing of inaccurate particulars'. The expression 'particulars' refers to facts, details, specifics, or information about someone or something. Therefore, the expression 'furnishing of inaccurate particulars of income' implies furnishing of details or information about income which are not in conformity with facts or truth. The details or information about income deal with factual details of income and this cannot be extended to areas which are subjective, such as status of taxability of an income, admissibility of a deduction and interpretation of law. The furnishing of inaccurate information, thus, relates to furnishing of factually incorrect details and information about income.

5.2.4 In the instant case, what had been treated as furnishing of inaccurate particulars was making of a claim which was not admitted by the A.O.. The admission or rejection of a claim is a subjective exercise. Whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. The A.O. has treated the Appellant's making an incorrect claim of income as furnishing of inaccurate particulars. What is a correct claim and what is an incorrect claim is a matter of perception. Raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income. 'Inaccurate' is something factually incorrect and interpretation of law can never be a factual aspect. Just because the A.O. does not accept an interpretation, such an interpretation is not rendered incorrect.

5.2.5 Coming to a decision in this case, I find support in the following decision of Hon'ble Supreme Court:

- *The Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. (322 ITR 158) ,it is held 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.*

*(i.) Even if the Appellant makes a purported wrong claim in ROI but the same is disclosed in ROI, penalty is not leviable. Such view has been taken by the **Hon'ble Bombay High Court, being the jurisdictional High Court in the Appellant's case, in the case of CIT vs. Nalin P. Shah (HUF) (40 taxmann.com 86)**. In that case, the respondent-Appellant had declared long term capital loss of Rs. 4.39 crores which were inclusive of loss incurred on the sale of US-64 units. The AO disallowed the loss on sale US-64 units on the ground that where income from particular source was exempt from tax then the loss from such source could not be set off from another source under the same head of income. In view of the above, the AO also initiated penalty proceedings and imposed penalty under section 271(1)(c) of the Act. The Hon'ble Bombay High Court, by dismissing the appeals filed by the Department affirmed the order of the Hon'ble Tribunal and held that:*

"the Tribunal in the impugned order held that the respondent-Appellant had in its return of income filed a note with its computation of income disclosing all details about the sale of US-64 units, the loss and resultant carry forward. Further, all details were disclosed in its return of income as is evident from the fact that the AO gathered information about the carry forward loss and sale of units from return filed by the respondent-Appellant. The Tribunal held that the from the aforesaid facts at the highest it can be said that the claim of the Appellant was not sustainable in law but there was no furnishing of inaccurate particulars or concealment of income on the part of the respondent-Appellant. Thus, the penalty was set aside."

➤ Further, the **Hon'ble Bombay High Court** in the case of **Sesa Resources Ltd vs. ACIT (219 Taxman 92)** held that where there was no dispute that the appellant disclosed all the facts and the appellant did not conceal any facts, and, further that based on the disclosed material, the appellant sought the deduction which was denied on the ground that it was not entitled to the same as a matter of law, the Hon'ble Tribunal was in error in holding that merely because the claim for deduction was denied the appellant is liable to pay a penalty.

> The Hon'ble Bombay High Court in the case of *DIT vs. Administrator of the Estate of Late Mr. E.F. Dinshaw (218 Taxman 125)* held that penalty for concealment of income, cannot be levied for claim being rejected by revenue, where full details were disclosed in return. That was the case in which the Appellant claimed that section 94(7) of the Act did not apply to its case since that provision refers to "sale" whereas the Appellant's case was that of redemption. The Hon'ble Bombay High Court, followed the ratio laid down in the decision of *Reliance Petroproducts (supra)* and held that since the Appellant had given all the details and its claim was based on bona fide belief, penalty under section 271(1)(c) of the Act was not leviable.

> Similarly the Hon'ble Bombay High Court in the case of *CIT vs. M/s. Aditya Birla Nova Limited (ITA No. 3899 of 2010)* that the assessee had furnished all the details of its expenditure as well as income in its ROI, 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. The Hon'ble Bombay High Court further held that 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 attract penalty under section 271(1)(c) of the Act. The Hon'ble Bombay High Court also rejected the Department's argument that the decision in case of *Reliance Petroproducts (supra)* was per incuriam because it did not refer to Explanation 1 to section 271(1)(c) of the Act. This was the case where the Appellant's claim for a deduction under section 35D of the Act and provision for diminution in the value of investments was completely rejected by the Hon'ble Tribunal in the quantum appeal, yet, the Hon'ble Tribunal deleted the penalty under section 271 (1)(c) of the Act since the Appellant had disclosed all the relevant details.

5.2.6 The tenets for determining concealment or furnishing of inaccurate particulars have been laid out in the above judgments. I find

the facts and circumstances in the instant case are covered by the principles laid down in the above mentioned judgments of the Apex Court. Penalty u/s. 271(1)(c) of the Income Tax Act, 1961 of Rs. 31,76,7527-for alleged furnishing of inaccurate particulars of income is, therefore, deleted.

ALLOWED"

13. The learned DR submitted that the learned CIT(A) erred in deleting penalty u/s. 271(1)(c) without appreciating the fact that penalty levied is on inadmissible claim of expenses in the computation of income related to loan asset which is a clear case of filing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. He, further submitted that the ITAT has upheld the additions made by the Assessing Officer towards disallowance of expenses, which evidence itself is enough that the assessee has failed to declare its true and correct income and claim made is not only incorrect in law but also without any basis and the explanation furnished by the assessee for making the said claim is not found to be bona fide triggering Explanation (1) to section 271(1)(c) of the Act, as held by Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. vs. CIT (2013) 358 ITR 593 and Hon'ble Delhi High Court in the case of Zoom Communications Pvt. Ltd. 40 DTR 249 (2010).

14. The learned AR for the assessee on the other hand, strongly supported the order of the CIT(A). He further submitted that mere disallowance of expenses by the Assessing Officer that too of expenses which involves two possible views cannot be a reason for levying penalty u/s. 271(1)(c) of the Income tax Act, 1961. The facts of the assessee's case are squarely covered by the decision of Hon'ble Supreme Court in the case of Reliance Petroroducts (supra), wherein it was categorically held that mere disallowance of expenses by the Assessing Officer does not tantamount to furnishing of inaccurate particulars of income.

15. We have heard both the parties and perused the material available on record. The Assessing Officer levied penalty u/s. 271(1)(c) in respect of additions made on account of disallowance of expenses incurred on NPA and treated as part of cost of

assets in books of account but claimed as revenue in nature in the statement of total income. The Assessing Officer levied penalty u/s. 271(1)(c) for furnishing of inaccurate particulars of income. According to the Assessing Officer, the assessee has deliberately furnished inaccurate particulars of income so as to evade payment of taxes in respect of expenses. It is a contention of the assessee that it has furnished complete details of expenses in its financial statements by way of notes to account explaining the reasons of treating expenses as cost of assets and treatment of such expenses as revenue in nature in statement of total income. The assessee also explained reasons for treating such expenses as cost of assets. According to the assessee, the Assessing Officer never disputed the fact that these expenses are revenue in nature, but he has also not disputed the fact that these expenses are wholly and exclusively incurred for the purpose of business and are revenue in nature. The Assessing Officer levied penalty on disallowance of expenses merely for the reasons that the assessee has given differential treatment for such expenses in the books of account and return of income filed for the relevant assessment years.

16. Having heard both the sides and considering the material on record, we find merit in the arguments of the assessee for the reason that mere disallowance of expenses incurred cannot be considered as furnishing inaccurate particulars of such income, when assessee has furnished complete details of expenses and treatment of such expenses in its books of account, by way of notes to account explaining reasons for differential treatment in the books of account and in return of income for the relevant assessment year. We further observe that it is not a case of the Assessing Officer that assessee neither furnished any details of expenses nor explained reasons for giving differential treatment in books of account and return of income filed for the year. He levied penalty only for the reasons that assessee has given differential treatment of expenses in the books of account and in return of income without pointing out how such treatment given by the assessee towards expenses incurred on NPA is not allowable as revenue expenses, which is evident from the fact that the Assessing Officer has never doubted the genuineness of expenses and also not observed that these expenses are not revenue in nature. The additions made by the Assessing Officer towards disallowance of expenses

incurred on loan assets and treated as part of cost of asset and claimed as revenue in nature in statement of total income was only on account of different views taken on same set of facts and, therefore, they could at the most be termed as difference of opinion but nothing to do with concealment of income or furnishing of inaccurate particulars of income. This legal proposition is supported by the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts (supra), wherein, it was clearly observed that merely because the assessee has claimed the expenditure, which claim was not accepted or not acceptable to the Revenue, that by itself would not attract penalty u/s. 271(1)(c) of the Act. If the contention of the Revenue was accepted, then in case of every return where the claim made by the assessee was not accepted by the Assessing Officer for any reason, the assessee would invite penalty u/s. 271(1)(c) i.e. clearly not the intention of the legislature. The Hon'ble Bombay High Court in the case of Aditya Birla Nova Ltd (supra), held that merely because assessee has claimed expenditure, which was not accepted or was not acceptable to the Revenue, that by itself would not attract penalty u/s. 271(1)(c) of the Act. In this case, on perusal of facts, we find that the assessee's case squarely fall within the ratio laid down by the Hon'ble Supreme Court in the case of Reliance Petroproducts (supra), and hence, we are of the considered view that Assessing Officer erred in levying penalty u/s. 271(1)(c) of the Act in respect of disallowance of expenses. The CIT(A) after considered relevant submissions of the assessee have rightly deleted the penalty levied u/s. 271(1)(c) of the Act. We do not find any error in the order of the CIT(A) hence, we are inclined to uphold the findings and dismiss the appeal filed by the Revenue.

17. The assessee has filed Cross-Objection in support of order of CIT(A) and also taken a legal ground challenging validity of notice issued u/s. 274 r.w.s. 271(1)(c) of the Income tax Act, 1961, to argue that the said notice was issued alleging several defaults and that it was not discernible from the notice that the penalty was initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. Although, the assessee has taken a legal ground, challenging the validity of notice, we deem it fit and proper not to adjudicate the legal ground taken by the assessee for the reason that, we have already upheld the order of the

CIT(A) deleting penalty/s. 271(1)(c) on merits. Hence, the cross-objections filed by the assessee has been dismissed as infructuous.

Thus, the appeal by the Revenue and cross-objections by the assessee are dismissed.

18. In the result, the appeal filed by the revenue as well as the appeals and cross objections filed by the assessee are dismissed.

Order pronounced in the open court on this day of 25th July 2018.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai, Dated : 25th July, 2018.
SA

Sd/-
(G Manjunatha)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'C' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai