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

Before Ms.Sushma Chowla, JM & Shri N K Billaiya, AM

ITA No.3790/Mum/2011 : Asst.Year 2004-2005

M/s. Vinati Organics Ltd.
c/o. Karnavat & Co.,
2A, Kitab Mahal, 1st floor,
192, Dr. D N Road, Mumbai- 400001 ……. Appellant
PAN : AAACV6538K

Vs.

DCIT Rg 8(3),
Mumbai ……. Respondent

Appellant by : Shri Sunil Hirawat
Respondent by : Shri Pawan Kumar B

Date of Hearing : 27.07.2015		Date of Pronouncement: 31.07.2015.

ORDER

Per Sushma Chowla (JM) :

The present appeal filed by the assessee is against the order of Commissioner of Income-tax (Appeals), dated 22.02.2011, relating to assessment year 2004-2005 against order passed u/s 271(1)(c) of the Income-tax Act, 1961.

2. The only issue raised in the present appeal is against the penalty levied u/s. 271(1)(c) amounting to Rs.67,310/-. Briefly, in the facts of the present case, the assessee had incurred expenditure of Rs.3,77,000/- on account of Research & Development, which was disallowed by the AO. Further the leasehold expenses of Rs.1,87,627/ being spread over a period of lease was also disallowed. The CIT(A) confirmed the disallowance of expenditure in the hands of the assessee.

The Tribunal in ITA No.644/Mum/2008 vide consolidated order dated 05.06.2013 with lead order in ITA No.3015/Mum/2006 relating to A.Y. 2002-03 restored back the issue of Research & Development expenses to the AO. In respect of the disallowance of Rs.1.87 lacs being leasehold loan written off, the Tribunal held that the assessee was not entitled to the said deduction in respect of plots of land which was leased for a period of 95 years. However, in respect of other plots the matter was set aside to the file of the AO. Consequent to the order of the CIT(A) passed in the quantum proceedings, the AO held the assessee to have furnished inaccurate particulars of income and levied penalty u/s. 271(1)(c) of the Act at Rs. 2,02,560/-.

3. The CIT(A) partly deleted the penalty in respect of Research & Development expenses on the ground that the assessee has disclosed all material facts with respect to its claim of expenses on Research & Development and partly confirmed the imposition of penalty in so far as it relates to the expenses disallowed on account of leasehold expenses by observing as under:

> *"In the present case, the tax auditor of the appellant clearly informed the company that it has incorrectly claimed capital expenditure as revenue in its P & L Account yet the appellant chose to ignore that the explanation of the appellant by no stretch of imagination can be treated as bona fide. But for scrutiny of return of income, the matter of lease hold expenses being claimed as revenue expenditure would have not come to light. What was disclosed by the appellant was not the material fact or true fact. As the appellant has suppressed the facts in its return of income that it has claimed revenue expenditure which was basically capital in nature, thus the appellant is concealed the particulars of income and furnished inaccurate particulars of such income with respect to leasehold land written off. The penalty with respect to lease hold expenditure of Rs.1,87,626/- is, therefore, confirmed."*

4. The assessee is in appeal in respect of the said penalty levied u/s. 271(1)(c) of the Act against the disallowance of expenditure of Rs.1,87,626/-.

5. The learned AR for the assessee pointed out that the issue is squarely covered by the order of the Tribunal relating to A.Y. 2003-04, wherein as against similar disallowance of the claim of expenditure, the Tribunal held that no penalty is leviable u/s. 271(1)(c) of the Act.

6. The learned DR for the Revenue placed reliance on the orders of the authorities below.

7. We have heard the rival contentions and perused the record. So far as the issue relating to imposition of penalty qua lease hold expenses is concerned, the same has been decided in favour of the assessee in its own case in ITA No. 431/Mum/2012 relating to A.Y. 2003-04, vide order dated 05.06.2013 with lead order in ITA No. 3015/Mum/2006 relating to A.Y. 2002-03, held as under:

> *"Äs far as claim of lease hold written off is concerned we have upheld the addition made/confirmed by the AO/FAA for four plots of land. We have held that expenditure incurred under that particular head couldnot be treated revenue expenditure. But, upholding an addition in quantum proceedings does not result in automatic levy of penalty for furnishing inaccurate particulars of income. Assessee had not furnished details of leased plots and it was on that basis AO had made the addition. There was difference of opinion between the AO and the assessee about the treatment to be given to the said expenditure. Assessee claimed it was an expenditure of revenue nature, whereas AO and the FAA held it to be of capital nature. But, on the basis of such difference provisions of section 271(1)(c) cannot be invoked."*

8. The issue arising in the present appeal is identical to the issue before the Tribunal and following the same parity of reasoning, we hold that there is no merit in levy of penalty u/s. 271(1)(c) of the Act. Merely because the expenditure was given a different treatment by the authorities below, does not establish that the assessee had furnished inaccurate particulars of income. Consequently, we direct the AO to delete the penalty levied u/s. 271(1)(c) of the Act.

9. In the result, the appeal is allowed.

Order pronounced on this 31st day of July, 2015.

Sd/-	Sd/-
(N K Billaiya)	**(Sushma Chowla)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated : 31st July, 2015.
SA

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. The CIT, Mumbai.
4. CIT(A)-concerned, Mumbai
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai