IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM & SHRI S. RIFAUR RAHMAN, AM

आयकरअपीलसं./ **I.T.A. No. 5882/Mum/2009**
(निर्धारणवर्ष / Assessment Year: 2003-04)

ACC Ltd (formerly known as the Associated Cement Companies Ltd), Cement House, 121, M. K. Road, Mumbai	**बनाम**/ Vs.	DCIT Rg. 1(1), R. No. 579, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAACT1507C		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

आयकरअपीलसं./ **I.T.A. No. 5873/Mum/2009**
(निर्धारणवर्ष / Assessment Year: 2003-04)

DCIT Rg. 1(1), R. NO. 579Aayakar Bhavan, M. K. Road, Mumbai-400 020	**बनाम**/ Vs.	ACC Ltd (formerly known as the Associated Cement Companies Ltd), Cement House, 121, M. K. Road, Mumbai
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Yogesh Thar, Shri Chaitanya Joshi, and Shri Hardik Niral, AR,
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Michael Jerald, DR

सुनवाईकीतारीख/ **Date of Hearing**	:	14.07.2020
घोषणाकीतारीख / **Date of Pronouncement**	:	16.07.2020

आदेश / O R D E R

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present two Appeals have been filed by the assessee and revenue against the order of Commissioner of Income Tax (Appeals)-1, Mumbai, dated 18.08.2009 for AY 2003-04 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

3. The brief facts relevant for the ground raised by the revenue and assessee are, the case of the assessee was selected for scrutiny and assessment was completed under section 143(3) of the Act on 8.3.2006 making various additions/disallowances and determining total loss of ₹ 65,84,52,848/– and determined the book profit at ₹ 1,89,56,60,483/–. The assessing officer along with the assessment order issued a penalty notice under section

271(1)(c) dated 8.3.2006 and duly served the same on the assessee. Subsequently, assessee filed an appeal before Ld CIT(A) and Ld CIT(A) determined the total loss at ₹ 1,77,16,58,901/– and book profit under section 115 JB at ₹ 18,51,72,160/–. After receipt of First appellate order, a show cause notice was issue to assessee, why penalty be not levied under section 271(1)(c) of the Act. After considering the submissions of the assessee, assessing officer confirmed and levied the penalty on various issues including treating the purchase of software as a revenue expenditure and reversal of provisions in the books of accounts in computing book profit under section 115JB. The other issues on which penalty levied were deleted by the Ld CIT(A) and on which revenue/assessee are not in appeal. The revenue is in appeal only on reversal of provision in computing the book profit on which Ld CIT(A) has deleted the penalty. Similarly, the Ld CIT(A) has confirmed the penalty on treating the purchase of software as capital expenditure by the assessee and subsequently accepted during assessment proceedings. On which the AO levied the penalty.

4. At the time of hearing, learned AR brought to our notice that the revenue is in appeal on the deletion of penalty levied on reversal of provision in arriving the book profit to the extent of ₹ 46,27,200/–. The total addition itself is less than ₹ 50 lakhs, it falls under the Circular No.17 of 2019 dated 08.08.2019 issued by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, the CBDT has revised the monetary limit for filing appeals before the ITAT from the existing limit of Rs. 20 lacs to Rs. 50 lacs. The above facts was confirmed by the learned DR, therefore we are inclined to **dismiss** the appeal filed by the revenue.

5. With regard to the grounds of appeal filed by the assessee, the brief facts relating to the levy of penalty are, during assessment proceedings, the assessing officer observed that assessee has purchased software with the cost of ₹ 39 lakhs and claimed the same as revenue expenditure. When the assessee was asked why the same should not be disallowed and to be treated as capital expenditure eligible for depreciation as per income tax rules. In reply, assessee confirmed that assessee has purchased computer software of ₹ 39 lakhs and in the return of income by

an inadvertent error the same has been omitted to be capitalized. Accordingly assessing officer allowed the depreciation as per the relevant provision, allowable for the assessment year to the extent of ₹ 1,170,000/- and the additional expenditure claimed to the extent of ₹ 2,730,000/- was added to the taxable income. Since the assessee accepted that it has claimed the above said expenditure as a revenue inadvertently, the assessing officer initiated the penalty proceedings and levied the penalty. Aggrieved with the above levy of penalty, assessee preferred an appeal before Ld CIT(A) and Ld CIT(A) sustained the levy of penalty. Aggrieved with the above order, assessee is in appeal.

6. At the time of hearing, learned AR brought to notice the penalty order and submitted that assessee has claimed in advertently the cost of software and he submitted that assessee itself disclosed in its tax audit report and submitted that the claim of software purchase he is an debatable issue. Further he submitted that the notice issued by the assessing officer is defective and there is no concealment of any information since assessee has disclosed all the relevant information in its return of income. He submitted that the acceptance of bona fide mistake

cannot be a ground for levy of penalty. Further he submitted that merely because assessee claimed expenditure as revenue, held as capital by assessing officer, penalty could not be imposed where assessee disclosed nature of transaction in its financial statement and return of income. In this regard, he relied in the case of ACIT versus Torque pharmaceuticals private limited (2015) 173 TTJ 96 (Chandigarh tribunal).

7. On the other hand, learned DR submitted that assessee cannot take advantage that it has disclosed all the information in its return of income and it is responsibility of the assessee should disclose clearly relevant information not merely disclosing vaguely. He supported the findings of Ld CIT(A).

8. Considered the rival submissions and material on record. We notice that assessee has purchased software at the cost of ₹ 39 lakhs and claimed the same as revenue expenditure. At the time of assessment proceedings, assessing officer brought to the knowledge of the assessee that it is a depreciable asset and as per income tax rules assessee can claim only depreciation @ 60%. The assessee also confirmed that it has claimed the above

expenditure inadvertently. The facts in this case are similar to the facts in Torque Pharmaceutical (supra), the coordinate bench of Chandigarh adjudicated as below:-

> *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 6 authorities below and additions have been confirmed. Therefore, it is a case of mere disallowance of expenditure without bringing any adequate material against assessee to prove that 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 provisions had been admitted by Hon'ble Punjab & Haryana High Court. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs Haryana Warehousing Corporation 314 ITR 215 held as under :*
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> > *"Held, dismissing the appeal, that the deduction claimed by the assessee was legitimate and bonafide 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."*
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> *9. The ld. CIT(Appeals) considering the material on record correctly followed the decision of the Delhi Bench in the case of AT&T Communications Services (India) Pvt. Ltd. (supra) for canceling the penalty against the assessee. The assessee made a bonafide claim of deduction of the expenditure even though it was not acceptable to the revenue, would not lead to inference that 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 malafide. 7 Therefore, decision relied upon by ld. DR is not applicable to the facts of the case.*

> *10. Considering the above discussion, in the light of the findings of the ld. CIT(Appeals), we do not find any justification to interfere with the order of the ld. CIT(Appeals) in canceling the penalty.*

9. The above issue is ipso facto similar to the facts in the present appeal. Therefore, respectfully following the above findings, we are inclined to delete the penalty levied in this case. Accordingly ground raised by the assessee is allowed.

10. In the result appeal filed by the assessee is **allowed** and appeal filed by the revenue is **dismissed.**

11 *Order pronounced in the open court on 16th July 2020.*

Sd/- *sd/-*
(Pawan Singh) (S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member लेखासदस्य / Accountant Member
मुंबई Mumbai;दिनांकDated : 16.07.2020
Sr.PS. Dhananjay

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.**उप/सहायकपंजीकार** (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**