

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, C, मुंबई ।

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

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NOs.6005, 6006 & 6007/Mum/2014
Assessment Years: 2004-05,2005-06& 2006-07**

DCIT CIR 3(1), R.No.607, Aayakar Bhavan, Mumbai-400020 (Revenue)	बनाम/ Vs.	M/s. CIFCO Properties P. Ltd., Bhupen Chambers, Dalal Street, Fort, Mumbai-400023 (Respondent)
P.A. No.AAACC1598G		

Revenue by	Shri Mukesh Jain (DR)
Respondent by	Shri Vipul Joshi (AR)

सुनवाई की तारीख / Date of Hearing :	28/04/2016
आदेश की तारीख / Date of Order:	31/05/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals have been filed by the Revenue against the common order passed by the Ld. Commissioner of Income Tax (Appeals), Mumbai-6 {(in short 'CIT(A)}}, dated 30.6.2014 passed against penalty orders u/s 271(1)(c) for the Assessment

Years 2004-05, 2005-06 & 2006-07, all pertaining to the same assessee.

2. During the course of hearing, arguments were made by Shri Vipul Joshi, Authorised Representative (AR) on behalf of the Assessee and by Shri Mukesh Jain, Departmental Representative (DR) on behalf of the Revenue.

3. The issue involved in all these three appeals are identical with regard to deletion of penalty levied u/s 271(1)(c) on the disallowance of interest expenditure.

3.1. During the course of hearing Ld. DR placed reliance upon the penalty order. On the other hand, Ld. Counsel submitted that the assessee company has been incurring heavy losses year after year. It was submitted that actually there was no tax effect involved as there were continues losses and there was no motive to conceal income or evade any tax. It was further brought to our notice that in the similar circumstances disallowances were made in A.Y. 1998-99, and thereafter penalty proceedings were initiated but the same were dropped vide order passed by the AO dated 08.11.2010 and therefore, it was submitted that in these years also there was no justification for levy of penalty and that's how Ld. CIT(A) after considering entire facts and circumstances of the case, deleted the penalty. He vehemently relied upon the order of the Ld. CIT(A) to argue that penalty has been rightly deleted and therefore revenue's appeals were liable to be dismissed.

3.2. We have gone through the orders of the lower authorities and submissions made by both the sides. The brief facts are that the assessee was claimed to have been engaged in the business of real estate. However during the year the assessee had not done any business except getting his share from a joint venture project. Further, the relevant facts to decide these issues are that assessee had entered into a joint venture for development of a property situated in Pune city, long back. This project had started in 1990, it was noted by the AO that investment made in the said project was from 'Interest Free' fund which the assessee had received from Kenilworth Investment P. Ltd. However, later on, the special court dealing with the matter of recovery in the cases directed the assessee company to make repayment of the loan from M/s. Kenilworth Investments P. Ltd. with accrued interest. This interest expense was claimed by the assessee as deductible against the business income from the said joint venture. These interest expenses were disallowed by the AO with the following observations made in the assessment order for A.Y. 2004-05:-

“The claim of the assessee is not acceptable. The funds have been admitted by the assessee to be interest free originally. This apparently was one of the factors for the assessee to enter in the joint venture. The said funds were kept invested in the said venture for the entire period for which the court demanded the interest, or not, is not brought on record. It is seen from the balance sheet of the assessee company that the assessee had made certain investments also amounting to Rs.25,00,000 Thus apparently the funds from borrowed capital alone have gone in these investments There is nothing on records to show that those funds on which the assessee had been required to pay the interest by the court had had not at all been used for

the purpose of making the said investments. Moreover the demand by the said court is in some other reference and not under such proceedings which should effect the computation of income under the Income-Tax Act 1961. The party which had given those loans has not charged the interest. Thus the claim of the assessee is found untenable. The same is therefore disallowed.

The assessee has claimed further interest amounting to Rs.1,04,27,960/- in its P/L a/c. According to the representative of the assessee, said interest had been paid on certain other loans which the assessee had to borrow for keeping the company afloat. It has been argued that the company had got total accumulated losses amounting to Rs.17.01 crores, as can be seen from the Balance sheet of the company. To meet out those liability which could not be postponed the assessee had to borrow certain funds on which the interest amounting to Rs. 1,04,27,960 had been paid. According to the representative of the assessee the entire amount has therefore to be allowed as business expenses.

The submissions of the assessee have been considered. The details filed and the accounts of the assessee have also been perused. However the contentions of the assessee are not found to be acceptable. The interest on the borrowed fund has to be allowed u/s 36(1)(iii). The conditions for allowing an interest under that section are that the funds on which the interest has been claimed should have been borrowed and used for the purpose of the business. Apparently this condition of user for the purpose of the business has not been fulfilled in this case. I therefore do not find the said amount allowable expense from the business income of the assessee.”

3.3. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) wherein detailed submissions were made to explain the circumstances under which the impugned amount of interest was paid by the assessee.

3.4. The assessee filed an appeal before the Ld. CIT(A) but the disallowances were confirmed. Subsequently, penalty proceedings were initiated and penalty was levied u/s 271(1)(c).

3.5. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) against the penalty order wherein the penalty was deleted by the Ld. CIT(A) with the following observations:

“I have considered the above submissions of the appellant as well as the facts of the case. It is seen that the appellant had entered into two joint ventures for development of real estate. So far as the assessment year 2004-05 is concerned, both the joint ventures came to end during the current year. The income from both the joint ventures was offered for tax as business income and has been assessed as such. The interest expenditure incurred in respect of the joint ventures, which started in assessment year 1996-97 was not claimed in earlier years and was carried forward to be charged on completion of joint-venture projects. However, later, during the year under consideration, the AO noted that the investments made in the joint ventures were from interest free funds which the appellant had received from Kenilworth Investments Private Ltd. Later on, the Special Court dealing with Harshad Mehta scam cases directed the appellant company to make payment of the loan to Kenilworth Investments Private Ltd along with accrued interest. The interest amounting to Rs.2,26,56,462/- (which consists of interest pertaining to the previous both before and after the Special Court's order), was therefore claimed by the appellant against the business income from the joint ventures. However, since originally the loan was interest free, the claim of the appellant was denied by the AO during the assessment proceedings. On these facts, the Ld. CIT(A) held that the claim of the appellant for interest of Rs.2,26,56,462/- and Rs.

1,04,27,960/- is not allowable on account of following reasons:

(i) The appellant and Kenilworth Investments Private Ltd had mutually agreed that no interest is payable on the money advanced by Kenilworth to the appellant.

(ii) The Special Court order dated 05.07.1995 ordered the appellant to pay Rs. 11.82 crores along with interest @20% p.a. from 24.04.1992 to 28.02.1995 and interest @20% p.a. from 01.03.1995 till payment or realisation and the said amount be paid by crediting the same to the credit of Respondent No. 4's bank account No. 406 with Bank of India, Dalal Street Branch at Bombay. The Respondent No. 4 is "Mr S.D. Parikh i/b M/s Malvi Ranchoddas and Co. for Respondent No.4.

(iii) Though the Special Court vide order dated 05.07.1995 has ordered payment of interest @20%, no interest has been paid till date despite lapse of more than 16 years, till date. It is not certain whether the appellant shall ever pay any interest to MIs Kenilworth. Again, it is not certain whether the Special Court's order has become final.

(iv) It is pertinent to note that the appellant has deposited only Ps. 1.05 crores with the custodian on 03.09.1995 and in last more than 16 years, out of Ps. 11.82 crores and interest, no further amount has been paid.

(v) The interest expenditure is at best a contingent liability as it is not certain whether the Special Court's order would ever come into effect either legally or factually and whether the appellant will ever pay any interest.

(vi) The appellant is claiming interest against project CPPL Grishma JV-1 completed in 2004 and interest accrued from 1990 till 2004 in case of Kenilworth Investments Private Ltd on project completion method. The fact itself is not certain whether the loan taken from Kenilworth Investments Private Ltd was actually invested in the said joint-venture or the funds were taken out and utilised for any other purpose including investment.

(vii) As claim of interest is merely based on Special Court order which has never /been given effect to in more than last 16 years and is not likely to be given effect to on any future date, the claim of interest is not allowable.

4.1 The claim of interest of Rs. 1.04 crores to Kenilworth Investments Private Ltd is for appellant's own project

Nirmalnest'. The Nirmalnest project was completed in March 2001. No interest has been actually paid by the appellant and income was recognised in 2001. No income has been recognised with respect to Nirmalnest project during the present assessment year As the project has been completed in 2001 itself and there is no interest paid by the appellant to Kenilworth Investments Private Ltd despite order of Special Court in last 16 years and there is no likelihood of payment of interest ever, the claim of interest expenditure against the project which was completed in 2001 is not allowable.

9. *It may be seen from the above that the disallowance of interest of Rs.2,26,564621- made by the AO is mainly on the ground that originally the loan from Kenilworth Investments Private Ltd was interest free. However, although this fact has also been noted by the Ld. CIT(A), the main reason given by him for disallowance of interest was the fact that no interest has been paid by the appellant till date, despite a lapse of more than 16 years. Ld. CIT(A) has also observed that interest expenditure is at best a contingent liability as it is not certain whether the Special Court's order would ever come into effect either legally or factually and whether the appellant will ever pay any interest. Thus, although the Ld. CIT(A) has confirmed the disallowance of interest of Rs.2,26,56,4621-, his reason for the disallowance is different from the reason given by the AC.*

10. *Similarly, interest of Rs. 1.04 crores, which was claimed by the appellant in respect of Nirmalnest project has been disallowed by the AC again on account of the reasoning that the borrowings of the appellant from Kenilworth Investments Private Ltd were interest free. However, Ld. CIT(A) has upheld the disallowance of interest on the ground that the project Nirmalnest was completed in March 2001 and hence its allowability should have been considered only in assessment year 2001-02 and not the current year. Further, Ld. CIT(A) has also noted that no interest has been actually paid by the appellant and the income in respect of Nirmalnest project was recognised in 2001 and not in the current year. In assessment years 2005-06 and 2006-07, the claims of*

interest at Rs.1,04,31,392/- and Rs.1,04,28,637/- respectively have been disallowed by the AC and upheld by Ld. CIT(A) on similar reasons and logic which are different from each other.

11. Coming to the real facts of the case of the appellant, it is seen that the appellant, during the period from 31/03/1990 to 31/03/1992, had advanced a sum of Rs.90,31,869/for the joint-venture project. The amount advanced for the joint-venture project was out of the borrowed funds and hence interest payable was debited in the books of account interest paid to joint-venture and the same was carried forward in the balance sheet every year. This interest was debited for three years as under

Interest for the year ended	Amount (in Rs.)
31.03.1990	88,459
31.03.1991	10,30,346
31.03.1992	16,58,882

12. In March 1992, the appellant received interest free funds from Kenilworth Investments Private Limited. Therefore no interest was debited during the accounting years 31/3/1993, 31/3/1994 and 31/3/1995. However in July, 1995, the Special Court, Mumbai, which was constituted for trial of offences relating to Harshad Mehta scam cases, directed that the interest be paid by the appellant to Kenilworth Investments Pvt. Ltd from the date of advance (which was 25/3/1992). Accordingly in the accounts for year ended 31/3/1996 and subsequent years, the interest in respect of the amount received from Kenilworth and utilized for joint venture was debited to account 'Interest on Joint Venture ^{account!}. Since, in the accounting year ended on 31/3/2004, the project under joint venture got completed, the appellant offered the income from the joint venture for tax and the interest expenses, as above, amounting to Rs.2,26,56,462/- (which was being carried forward in the Balance Sheets from year to year) were claimed in the Profit and Loss account. The whole breakup of such accommodated interest of Rs.2,26,56,462/- is as under:

<i>Interest for the year ended</i>	<i>Amount (in Rs.)</i>
<i>31.03.1990</i>	<i>88,459</i>
<i>31.03.1991</i>	<i>10,30,346</i>
<i>31.03.1992</i>	<i>16,58,882</i>
<i>31.03.1996</i>	<i>72,34,157</i>
<i>31.03.1997</i>	<i>18,06,374</i>
<i>31.03.1998</i>	<i>18,06,374</i>
<i>31.03.1999</i>	<i>18,06,374</i>
<i>31.03.2000</i>	<i>18,06,374</i>
<i>31.03.2001</i>	<i>18,06,374</i>
<i>31.03.2002</i>	<i>18,06,374</i>
<i>31.03.2003</i>	<i>18,06,374</i>
<i>Total</i>	<i>2,26,56,462</i>

13. Further, it is also seen that during the course of assessment proceedings, the appellant had furnished details of its interest claim vide letters dated 09/10/2006 and 30/10/2006. Other facts evident from the records which are relevant are that the issue of allowability of interest had come up before the Hon'ble J/TAT for the first time for Assessment Year 1996-97. The ITAT restored the matter to the file of the CIT(A) to consider the said claim along-with appeal filed by the appellant against the order giving effect to CIT(A)'s order, In this appeal, the issue before the ITAT was whether interest for the earlier accounting years i.e. 31/3/1993, 31/3/1194 and 31/3/1995 was also allowable in the year ended on 31/3/1996 as the entire interest of the earlier period was also provided based on the order of the Special Court. The AO had already allowed interest for the assessment year 1996-97 to be capitalized to the respective project including joint venture projects in view of the order of the CIT(A). In the appeal effect order for assessment year 1996-97, the AO has given the finding that interest on JV I and II has been shown as deferred revenue expenses by the assessee company over the past several years. Subsequently also, till the Assessment Year 2003-04, the interest relating to JV

I has been carried forward under the 'Interest on Joint Venture account'.

14. Thus it can be seen that the appellant was constantly disclosing in the Balance Sheet separately, the amount of Interest paid for Joint Venture carried forward from year to year. Further, it is also seen that in note No. 4 of Notes to the Accounts for the year under consideration, the fact that interest amount of Rs.2,2656,462/- having been claimed on the completion of the project has been disclosed. Also, in the Balance Sheet for the year under consideration, under the head Miscellaneous Expenditure - Interest paid for Joint Venture is disclosed.

15. Coming to the facts in respect of the disallowance of interest of Rs.1,04,27,960/-, it is seen that the said interest is in respect of another loan of Rs.5,70,00,000/- taken from Kenilworth Investments Pvt. Ltd and the interest liability @20% came to Rs.1,14,00,000/-. Out of this, since the appellant's Andheri Project was not completed during the year, the interest of Rs.9 72,040/- was allocated to Andheri Project and the balance amount of Rs.1,04,27,960/- was claimed during the year on account of Special Court's order. Similarly, in subsequent two years, the amounts of interest in respect of loan of Rs.5,70,00,000/- taken from Kenilworth Investments Pvt. Ltd, have been claimed at Rs. 1,04,31,392/- and Rs. 104,28,637/- respectively.

16. Having narrated all the facts as above, which are not in dispute, let us see as to whether the claim of interest by the appellant and disallowance thereof, both by the AO as well as CIT(A) would amount to concealment of particulars of income or furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. It is evident, that the appellant had neither concealed any particulars of its income nor had it furnished any inaccurate particulars of income. A claim made under a bona fide belief, but disallowed during

the course of assessment proceedings does not amount to concealment of particulars of income or furnishing of inaccurate particulars of income. So far as the claim of interest of Rs.2,26,56,462/- is concerned, for the first three years i.e. AY 1990-91, 1991-92 and 1992-93, such claim for carry forward of interest was bona fide, because the appellant had invested an amount of Rs.90,31,8691- in the joint-venture project from interest bearing borrowed funds. Later, when the appellant got interest-free loan from Kenilworth Investments Pvt. Ltd, it did not claim any carry forward of the interest for next three assessment years i.e. 1993-94, 1994-95 and 1995-96. However, as a consequence of the order of the special Court, the appellant started claiming carry forward of interest from assessment year 1996-97. All these claims are reflected in the books of account of the appellant from year to year.

17. Similarly, in respect of interest claims of Rs.1,04,27,9601-, Rs.1,04,31,392/- and Rs.104,28,637/- respectively in the three assessment years under consideration, the claims have been made and have been disclosed in the books of accounts of the appellant. Further, it may be noted that in the assessment proceedings for earlier years, the claims of the appellant in regard to both types of interest, for carry forward, have been recognised from year to year. These claims for carry forward of interest in earlier years have not been denied to the appellant. In these circumstances it cannot be said that there is any concealment of the particulars of income or furnishing of inaccurate particulars of income the provisions of section 271(1)(c) of the Act are as under:

18. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) If the [Assessing Officer] or the [* * *] [Commissioner (Appeals)] [or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person*

(a) * * * *]

(b) has [* * * *] failed to comply with a notice [under sub-section (2) of section 11 5WD or under sub-section (2) of section 11 5WE or under sub-section (1) of section 142] or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142]; or

(c) has concealed the particulars of his income or [* * * *] furnished inaccurate particulars of [such income, or]

(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 often 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 sume which shall not be less than but which shall not exceed three times the amount of tax to be evaded by reason of the concealment of particulars of the income or frnge benefits or the furnishing of inaccurate particulars of such income or fringe benefits]:

18. Further, Explanation 1 t section 271(l)(c) provides as under:

Explanation 1: Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the [Assessing Officer] or the [* * * * *] [Commissioner (Appeals)] lot- the

Commissioner] to be false, or

(B) such person offers an explanation which he is [not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,]

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this subsection be deemed to represent the income in respect of which particulars have been concealed.

19. From the facts of the case as discussed above, it is evident that the appellant's case is not a case where particulars of income have been concealed or inaccurate particulars of income have been furnished. So far as the explanation-1 above is concerned, the case of the appellant would fall in clause (A), only if the appellant had failed to offer an explanation or had offered an explanation which has been found to be false by the AO. It may be noted that the appellant has not only offered an explanation, but also such explanation was substantiated from the facts of its case in earlier years and also by the Special Court's order. Such explanation was also not false. Hence, clause (A) of the above Explanation is not applicable.

20. Alternately, the case of the appellant would fall in clause (B), if the appellant had offered an explanation, which it was not able to substantiate and had failed to prove that such explanation was bona fide and that all the facts relating to the same and material to the computation of his total income had been disclosed by the appellant. This clause also does not apply to the appellant because the appellant had offered an explanation and had also substantiated the same in terms of its return of income, books of account and other details filed before the AO as well as the Special Court's order. It is pertinent to note that Explanation-1 to section 271(1)(c) is restricted to a case where the assessee is unable to offer an explanation or is unable

to substantiate the explanation offered by him in respect of factual details of his income. Explanation-1 does not apply to a case where addition/disallowance has been made by mere rejection of a legal claim made by the assessee. Hence, provisions of section 271 (1)(c) are not attracted.

21. Thus, on proper interpretation of the above section, it would be evident that all the particulars and facts relevant for the purpose of computation of total income of the appellant were on record and it cannot be said that such particulars of income have been concealed by the appellant. Furthermore, the appellant had not declared any wrong figures in its accounts which could have meant that the appellant had declared inaccurate particulars of its income.

22. The AO has relied upon the decision in the cases of K.P. Madhusudhan (supra) and Dharamendra Textile Processors (supra). These decisions do not apply to the case of the appellant simply because the facts in those cases were completely different. In the case of K. P. Madhusudan (supra), it has been held that "Where the assessee has offered an explanation which the taxing officer has found to be false or the assessee has offered an explanation but there was no material or evidence to substantiate it, he shall be deemed to have concealed such income within the meaning of section 271(1)(c)." In the case of the appellant, an explanation was offered and the said explanation offered by the Appellant was an explanation which was bona fide. Hence, the case of K. P. Madhusudan is not applicable to the case of the appellant. The second case of Dharamendra Textile Processors (supra) is also not applicable, just because it is only on the point of mens-rea.

23. In the case of Reliance Petro Products Pvt. Ltd (supra), cited by the appellant, Hon'ble Supreme Court has held as under:

"7. As against this, learned counsel appearing on behalf of the respondent pointed out that the language of s. 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the

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

"271(1) If the AO or the CIT(A) or the CIT in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particular of his income or furnished inaccurate particulars of such income."

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word 'Particulars' used in the s. 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 (|any statement made or any detail supplied was found to be factually incorre Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By

any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In CIT vs. Atul Mohan Bindal (2009) 225 CTR (SC) 248 . (2009) 28 DTR (SC) 1 : (2009) 9 SCC 589, where this Court was considering the same provision, the Court observed that the AO has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India vs. Dharamendra Textile Processors (2007) 212 CTR (SC) 432 : (2008) 13 SCC 369, as also, the decision in Union of India vs. Rajasthan Spinning & Weaving Mills (2009) 224 CTR (SC) 1 : (2009) 23 DTR (SC) 158: (2009) 13 SCC 448 and reiterated in para 13 that:

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

8. Therefore, it is obvious that it must be shown that the conditions under s. 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff vs. Jt. CIT & Anr. (2007) 210 CTR (SC) 228: (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 s.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 ci. (iii) of s. 2 71 (1) provided for a discretionary jurisdiction upon the assessing authority, in as much as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held

that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of inens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff vs. Jt. CIT & Anr. (supra) was upset. In Union of India vs. Dharamendra Textile Processors (cited supra), after quoting from s. 271 extensively and also considering s. 271(1)(c), the Court came to the conclusion that since s. 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 s. 271(1)(c) new Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under s. 276C of the Act. The basic reason why decision in Dilip N. Shroff vs. Jt. CIT & Anr. (cited supra) was overruled by this Court in Union of India vs. Dharamendra Textile Processors (cited supra), was that according to this Court the effect and difference between s. 271(1)(c) and s. 276C of the Act was lost sight of in case of Dilip N. Shroff vs. Jt. CIT & Anr. (cited supra). However, it must be pointed out that in Union of India vs. Dharamendra Textile Processors (cited supra), no fault was found with the reasoning in the decision in Dilip N. Shroff vs. Jt. CIT & Anr. (cited supra), where the Court explained the meaning of the terms 'conceal' and 'inaccurate'. It was only the ultimate inference in Dilip N. Shroff vs. Jt. CIT & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under s. 271(1)(c) that the decision in Dilip N. Shroff vs. Jt. CIT &

Anr. (cited supra) was overruled.

9. We are not concerned in the present case with the *mens recz*. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as: "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word 'particulars' in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under s. 271(1)© of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars."

24. Thus, the Hon'ble Supreme Court has held that penalty cannot be levied merely because the assessing officer and the assessee hold a divergent view on allowability of a claim for deduction. Further, in the case of Dilip N. Shroff, 291 ITR 519 (SC) [this case has been, though approved by the Hon'ble Supreme Court in principle, it has been overruled only on the point of *mens-rea* in Dharamendra Textile Processors, 306 ITR 277 (SC)], it has been held by Hon'ble Supreme Court that the meaning of the words 'conceal' and 'inaccurate' involves or 'keeping a secret' or 'withdraw from Observation' or 'cover up' or 'keep away from sight or prevent the discovery of' or 'to withhold knowledge of'. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income-tax authorities. Further, it has been held that the primary burden of proof in this regard is on the

Revenue. It may be seen that the case of the appellant does not fall under any of the definitions of concealment as propounded by Hon'ble Supreme Court in the case of Dilip N. Shroff (supra). Other decisions cited by the appellant also support this view.

25. In the background of above facts and the principles laid down by Hon'ble Supreme Court, it is evident that the AO was not justified in levying penalties under section 271(1)(c) of the Act at Rs.1,18,69,036/- Rs. 37,24,007/- and Rs.40,95,326/- respectively in the years under consideration. The AO is directed to delete the same.

3.6. During the course of hearing before us, nothing has been argued by the Ld. DR so as to contradict the well reasoned findings of the Ld. CIT(A). Undisputed facts are that there is no denial to the fact that impugned amount of interest was paid by the assessee. Further, there is no denial to the fact stated by the assessee that during the course of its business peculiar circumstances arose as a result of special courts order, which necessitated payment of impugned interest. The Ld. CIT(A) has made detailed analysis in this regard which we find to be correct on facts. The genuineness of the expenditure has not been doubted by the lower authorities. The claim has been made in the *bonafide* manner. The Ld. AO has made disallowance as in his opinion the same was not allowable. In our considered view, the claim made by the assessee did not give rise to any concealment of income or furnishing inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. In our view, Ld. CIT(A) has rightly relied upon the judgment of Hon'ble Supreme Court in the case of Reliance Petro Product Pvt. Ltd. for holding that this disallowance were not fit for levy of penalty. We find that

findings of Ld. CIT(A) are correct and in accordance with law and facts of this case. We do not find anything wrong in the order of the Ld. CIT(A) and therefore, the orders of the Ld. CIT(A) for all the three years are upheld and all three appeals filed by the revenue are dismissed.

4. In the result, these appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 31st May, 2016.

Sd/- (Joginder Singh) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (Ashwani Taneja) लेखा सदस्य / ACCOUNTANT MEMBER
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मुंबई Mumbai; दिनांक Dated: 31 /05/2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai