

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**

**BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND  
SRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.997 & 998/Mum/2014**

(A Y: 2003-04 & 2004-05)

M/s. Pik Pen Pvt. Ltd., 7, Parsian Building, V. P. Road, Ändheri (W), Mumbai 400058	Vs.	The Income Tax Officer-8(2)(4), Aayakar Bhavan, Mumbai
<b>PAN:AABCP 0512A</b>		
<b>Appellant</b>	..	<b>Respondent</b>
<b>Appellant by</b>	..	<b>Shri Jiger Mehta, AR</b>
<b>Respondent by</b>	..	<b>Shri K. Mohandas, DR</b>
<b>Date of hearing</b>	..	<b>26-07-2016</b>
<b>Date of pronouncement</b>		<b>26-07-2016</b>

**ORDER**

**PER MANOJ KUMAR AGGARWAL, AM:**

These are set of two appeals filed by the assessee for assessment years 2003-04 and 2004-05 respectively assailing the order of the Commissioner of Income Tax (Appeals)-16, Mumbai (for short “the CIT (A)”) confirming the levy of penalty u/s 271 (1) (c) of the Income Tax Act, 1961 (for short “the Act”). Since the commons issues are involved, both the appeals are being disposed off by this common order. For the purpose of adjudication, we take up grounds of appeal raised in ITA No.997/Mum/2014 for assessment year 2003-04 which are as follows:-

- “1. *The Ld. CIT (A) erred in facts and law in confirming the action of the A. O. in levying penalty u/s 271 (1) (c) of the Income Tax Act amounting to Rs.42,12,469/- on account of disallowance of depreciation on brand.*
2. *The Ld. CIT (A) erred in facts and in law in appreciating that, the appellant had not furnished inaccurate particulars of income which would warrant the levy of penalty u/s 271 (1) (c), merely on the grounds that the said claim of depreciation was rejected by the Assessing Officer and the same was confirmed by the Ld. CIT (A).*
3. *The Ld. CIT (A) erred in appreciating that disallowance of depreciation is sustained on grounds other than the grounds on which the Hon’ble ITAT had set aside the matter and that when the addition is sustained on a debatable issue of law, the question of levy of penalty on ground of furnishing inaccurate particulars of income does not arise.*

4. *The Ld. CIT (A) erred in facts and law in upholding the penalty u/s 271 (1) (c) levied by the ld. Assessing Officer by placing reliance on the judgments related to “concealment of particulars of income”, whereas the penalty in the instant case was initiated for furnishing inaccurate particulars of income”.*

2. The facts, in brief, are that the assessee is a resident Private Company who came into existence during 1998 to succeed the business of a Partnership Firm M/s. V. K. Industries (firm). The erstwhile firm was assignee of a trademark and immediately prior to transfer of its business to the assessee, it revalued the trademark in its books of account based upon the valuation report of registered valuer. The trademark was taken over by the assessee at revalued figures and depreciation thereupon was claimed by the assessee. The AO refused to allow the same on the revalued figures and allowed depreciation only on the WDV of the trademark as originally standing in the books of the firm. During assessment year in question, the Return of Income was filed by the assessee during November, 2003 and assessment thereof was completed u/s 143 (3) of the Act vide Assessment Order dated 30-12-2005. Certain adjustments and disallowances including depreciation disallowance as aforesaid were made in the assessment by the AO. Penalty proceedings were initiated u/s 271 (1) (c) of the Act against the assessee for furnishing inaccurate particulars of income and an amount of Rs.42,12,469/- was imposed as penalty vide Order dated 31-03-2008. The penalty was affirmed by the CIT (A) vide his order dated 29-11-2013. Aggrieved, the assessee is in appeal before us.

3. At the outset, the learned AR has submitted that the issue in dispute, being continuous in nature, has arisen for other assessment years also and similar penalties has been imposed on the assessee for those assessment year also. The penalty order stand adjudicated by ITAT on similar issue in assessee's own case for assessment year 2000-01 and 2007-08 in ITA No.4437 & 4438/Mum/2013 vide Order dated 19-05-2016. In support, the copy of the said order has been produced before us.

4. Upon perusal of the said order, we find that the penalty has been deleted by ITAT in assessee's own case for assessment years 2000-01 and 2007-08 on similar issues. The observations of ITAT made in Para 3 of the said order are reproduced below:-

*“3. Now, we shall take up the appeal for Assessment year 2000-01 (ITA No.4437/Mum/2013), with respect to levying penalty of Rs.8,08,500/- on account of disallowance of depreciation on brand. The ld. counsel contended that the assessee did not furnish inaccurate particulars of*

*income warranting penalty u/s 271(1)(c) merely on the ground that the said claim of depreciation was rejected by the Assessing Officer.*

3.1. *We have considered the rival submissions and perused the material available on record. We find that the Tribunal for Assessment year 2001-02 (vide ITA No.7232/Mum/2012) order dated 11/12/2015 set-aside the issue to the file of the Ld. Commissioner of Income Tax (Appeal) as has been reproduced above while disposing of the appeal of the assessee for Assessment year 2007-08. In the aforesaid order, following observation was made:-*

*“10. On hearing Ld Representatives of both the parties on the issues raised before us for the AY 1999-2000, we find the CIT (A) in the second round has left so many gaps with regard to the fact of AO’s failure to obtain prior approval of the JCIT and the consequences of not obtaining such approval on the claim of the assessee. The CIT (A) did not consider the fact whether the provisions of Explanation-3 to section 43(1) of the Act actually apply to the facts of the present case; whether AO merely ignored the claim of depreciation on the revalued cost of the trademark. Further, CIT (A) has also not considered whether there is any substitution of valuation at all when the AO considered the value of the trademark at “zero”. CIT (A) is directed to pass a speaking order as to how the Explanation-3 to section 43(1) OF THE Act applies to the facts of the present case from all angles if the conditions specified in the said Explanation-3 are fully satisfied or not. He is also directed to pass an order on how the AO is permitted to reject the valuation report furnished by the assessee when the AO does not have any other report on hand from the DVO or otherwise. Further, CIT (A) is also directed to examine the applicability of the cited judgment of the Hon’ble Gujarat High Court in the case of Ashwin Vanaspati Industries (supra) and others. Further also, CIT (A) should examine the applicability of the 5th proviso to section 32(1) of the Act and give reasons in writing on how the amended provisions apply to the facts of the present case. Thus, we remand the whole of the issue relating to the claim of depreciation on the trademark to the file of the CIT (A) for third round of the proceedings before him. This time, the CIT (A) is directed to examine each of the issues discussed above in a time bound manner attending to all the arguments raised by the Ld Counsel for the assessee before him in the set aside proceedings. It is needless to mention that the assessee shall be granted reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, all the issues raised in the original grounds as well as additional grounds are allowed for statistical purposes.”*

*Considering the aforesaid observation made by the Tribunal. Direction was issued as to how the Assessing Officer permitted to reject the valuation report furnished by the assessee when the Assessing Officer does not have any other report in hand from the DVO or otherwise. In view, of the aforementioned observation, we are of the view that at least penalty u/s 271(1)(c) will not survive, because, the Revenue has not substantiated that the assessee either furnished the inaccurate particulars or concealed its income, which are necessary ingredients for imposing penalty u/s 271(1)(c) of the Act. Even, if a wrong claim is made, it is the duty of the Assessing Officer either to reject or to guide the assessee. The decision in Reliance Petro Products Pvt. Ltd. and CIT vs Ajayb Singh & Company 253 ITR 630*

*(P & H) supports the case of the assessee. The Hon'ble Apex Court in Reliance Petro Products Ltd. observed as under:-*

*“10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, 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. 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, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature.”*

*In the light of the aforesaid observation from Hon'ble Apex Court and the factual matrix that the Tribunal even remanded the matter back to the file of the Ld. Commissioner of Income Tax (Appeal) even for the third round of the proceedings, the penalty is directed to be deleted. Thus, this appeal of the assessee is allowed”.*

4. Thus, a view has been taken by ITAT in assessee's own case and under similar circumstance and we find no reason to deviate from the same in any manner. Accordingly, the penalty is deleted and the appeal of the assessee is allowed.

5. As the issue in ITAT No.998/Mum/2014 for assessment year is identical with the above, our decision and stand applies to same *mutatis mutandis*.

6. **In the result, both the appeals of the assessee are allowed.**

Order pronounced in the open court on 26-07-2016

-Sd/-

**(MAHAVIR SINGH)  
JUDICIAL MEMBER**

-Sd/-

**(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**

		Date	Initial	
	Dictation pad attached with the Draft Order	No(hand-written script)		
1.	Draft dictated on	26/07/16		Sr.PS
2.	Draft placed before author	26/07/16		Sr.PS
3.	Draft proposed & placed before the second member			AM
4.	Draft discussed/approved by Second Member.			JM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			