

**आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।**

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

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष  
Before Shri Joginder Singh, Judicial Member,**

**ITA No.3997/Mum/2015  
Assessment Year:1999-2000**

DCIT, Circle-6(1)(2), Room No.506, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	<b>बनाम/ Vs.</b>	Asian Electronics Ltd. 107, Sumer Kendra, P.B. Marg, Opp. Mahindra Tower, Worli, Mumbai-400018
राजस्व / Revenue		निर्धारिती / Assessee
P.A. No.AABCA0832C		

निर्धारिती की ओर से / Assessee by	None
राजस्व की ओर से / Revenue by	Shri Sunil Kumar Agarwal-DR

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>16/08/2016</b>
<b>आदेश की तारीख / Date of Order:</b>	<b>01/09/2016</b>

**आदेश / O R D E R**

The Revenue is aggrieved by the impugned order dated 26/03/2015 of the Ld. First Appellate Authority, Mumbai. The Revenue has challenged deletion of penalty of Rs.42,92,178/- imposed u/s 271(1)(c) of the Income

Tax Act, 1961 (hereinafter the Act) holding that the addition is debatable issue, therefore, penalty is not leviable.

2. During hearing, the ld. DR, Shri Sunil Kumar Agarwal, defended imposition as well as confirmation of penalty u/s 271(1)(c) by contending that the assessee concealed the income/furnished inaccurate particulars of such income. The registered AD letter sent to the assessee was returned back by the postal authority with the remark "left", therefore, I have no option but to proceed ex-parte, qua the assessee, and tend to dispose of this appeal in the basis of material available on record.

2.1. I have considered the submissions of the ld. DR and perused the material available on record. The facts, in brief, are that the assessee declared income of Rs.20,52,640/- in its return filed on 30/12/1999. The assessment was completed u/s 143(3) of the Act determining the total income as returned by the assessee. The assessee company is having two units i.e. unit 1 and Unit 2 at Silvasa, eligible for deduction to the extent of 100% of their profit u/s 80IA of the Act. The assessee claimed that units at Silvasa had in addition to the switch automatic load monitoring systems and energy saving devices for tube light. The new products had no relation with the old units. The Assessing Officer observed that ALMS is nothing but assembly of switch operators along

with some other software which is merely a value addition to the item and the thus ingredients of ALMS is same item for which royalty should be charged. He notionally charged royalty at the rate of 5% on the total volume of sales of switch capacitors and ALMS charges notionally as an expenditure to Unit-1 and Unit-2. The royalty was worked out to Rs.1,42,63,365/- i.e. 5% of net amount of sales of ALMS of Rs.26,41,15,050/- and switch operators of Rs.12,11,52,52,245/- was reduced from profits eligible for deduction u/s 80IA of the Act. The Assessing Officer levied penalty of Rs.49,92,178/- u/s 271(1)(c) on the amount of Rs.1,42,63,365/-.

2.2. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the factual matrix was considered and held that mere addition cannot lead to inference that there was concealment or furnishing of inaccurate particulars. Placing reliance upon the decision in CIT vs Reliance Petro Products ltd. 322 ITR 158 (SC), CIT vs Nalin P. Shah (HUF) (40 taxman.com 86)(Bom.), Sesa Resources Ltd. vs ACIT (219 taxman 92)(Bom.), DIT vs Administrator of the Estate of Late Mr. E.F. Dinshaw (218 taxman 125)(Bom.), CIT vs Aditya Birla Nuvo Ltd. (ITA No.3899 of 2010) (Bom.), CIT vs Gujrat Insecticides Ltd. 218 taxman 130 (Guj.), Harsha H. Javeri vs DCIT 53 SOT 59 (Mum.), Narangs International Hotels Pvt. Ltd. vs DCIT 22 taxman.com 147 (TM)(Mumbai Tribunal) held that

penalty is not leviable, more specifically when the issue is debatable. The Revenue is aggrieved and is in appeal before this Tribunal.

2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, considering the factual matrix, case laws relied upon by the CIT(A) and explanation-1 to section 271(1)(c) of the Act, the decision on the issue being debatable, judicial pronouncement in CIT vs Krishna Maruti Ltd. 330 ITR 547, CIT vs Gurdaspur Cooperative Sugar Mills Ltd. 354 ITR 27 (P & H), CIT vs H. M. A. Udyog Pvt. Ltd. 195 taxman 394 (Del.), Bennet Coleman & Co. Ltd. vs ACIT 144 ITD 45 (Mum.), I find that neither there is concealment of income nor furnishing of inaccurate particulars of income, therefore, the penalty is not leviable. Even otherwise, if a wrong claim, if any, is made by the assessee that itself does not tantamount to furnishing of inaccurate particulars as was held by Hon'ble Apex Court in CIT vs Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC) and various other decisions discussed (supra). In the absence of any contrary material, I find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal). It is affirmed.

Finally, the appeal of the Revenue is dismissed.

This order was pronounced in the open in the presence of ld. DR at the conclusion of the hearing on 16/08/2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 01/09/2016

*Shekhar, P.S/निजी सचिव*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT, Mumbai.
4. आयकर आयुक्त / CIT- , 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