

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI AMARJIT SINGH, JM**

आयकर अपील सं./ITA No.2547&2549/Mum/2012

(निर्धारण वर्ष / Assessment Year :2003-04 & 2001-02)

Airline Financial Support Services (India) Ltd.(amalgamated with Tata Consultancy Services Limited), 9 <sup>th</sup> Floor, Nirmal Building, Nariman Point, Mumbai-21	Vs.	DCIT-3(1), Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACA 0944 Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Dinesh Vyas

राजस्व की ओर से /Revenue by : Shri B.D.Naik

सुनवाई की तारीख / Date of Hearing : 26/05/2016

घोषणा की तारीख/Date of Pronouncement 31/05/2016

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the appeals filed by the assessee against the order of CIT(A)-Mumbai, for the assessment year 2001-02 & 2003-04, in the matter of imposition of penalty u/s.271(1)(c) of the I.T.Act.

2. Common grievance of the assessee in both the years relates to levy of penalty u/s.271(1)(c) of the I.T.Act with respect to decline of claim of deduction u/s.10A and deduction u/s.80HHE with respect to interest income, service charges, exchange gain, profit on sale of assets and liabilities written back.

3. As the AO has not granted exemption u/s.10A and deduction u/s.80HHE with respect to these income, he also levied penalty u/s.271(1)(c) on the plea that assessee has furnished inaccurate particulars of income.

4. It was argued by Id. AR that penalty cannot be levied merely because legal claim for relief is not allowed by the AO. For this purpose, reliance was placed on the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd., 322 ITR 158, Dalmia Dyechem Industries Ltd., ITA No.1396 of 2013 (Bombay High Court), Sesa Resources Limited (38 Taxmann 224) (Bombay High Court) and Nalin P. Shah - HUF (40 Taxmann 86) (Bombay HC). Id. AR contended that even on merits assessee is eligible for claim of deduction in respect of this income in view of the decision of Hon'ble Bombay High Court in the case of Syntel Limited ( ITA Nos. 1974,1976,1978 of 2009) (Bombay High Court) and also on the decision of Mumbai Tribunal in the case of J.P. Morgan Service P.Ltd.( ITA No. 8987/Mum/2010 and 7822/Mum/2011) (Mumbai ITAT) and Motorola India Electronics (P) Limited (225 Taxmann 11) (Karnataka High Court).

5. On the other hand, Id. DR relied on the order of lower authorities.

6. We have considered rival contentions and carefully gone through the orders of authorities below and also deliberated on the judicial pronouncements cited by Id. AR. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders. In

view of the following judicial pronouncements, penalty cannot be levied merely because legal claim for relief is not allowed by the department :-

- i) Motorola India Electronics P. Ltd. 114!TD 387 (Banglore ITAT)
- ii) Reliance Petro Products Private Limited (322 ITR 158) (Supreme Court)
- iii) Dalmia Dyechem Industries Ltd. (ITA No. 1396 of 20 13) (Bombay HC)
- iv) Sesa Resources Limited (38 Taxmann 224) (Bombay High Court)
- v) Nalin P. Shah - HUF (40 Taxmann 86) (Bombay HC)
- vi) Ultimate Fashion Maker Limited (20 I 0- TIOL-116) (Delhi High Court)
- vii) Kanbay Software India Private Limited (31 SOT 153) (Pune Tribunal)
- viii) Oscar Udyog Limited (42 Taxmann 258) (Karnataka High Court)
- ix) Mansukh Dyeing & Printing Mills (219 Taxmann 91) (Bombay HC)
- x) Equest India (P.) Limited (41 SOT 225) (Mumbai Tribunal)
- xi) Hindalco Industries Limited (41 SOT 254) (Mumbai Tribunal)
- xii) Industrial Development Bank of India Limited (42 SOT 325)
- xiii) Legrand India (P.) Limited (7 Taxmann 132) (Mumbai Tribunal)
- xiv) Tata Communications Limited vs Addl CIT (ITA 0.11061Mum12008)
- xv) DCIT vs Videsh Sanchar Ni am Limited ITA No.1835/Mum/2008)

7. The Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd. (supra) has held as under :-

*Held:*

*"A glance of provision of section 271(1)(c ) 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. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot 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 of inaccurate particulars.*

*Therefore, it must be shown that the conditions under section 271(1)(c) 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.*

*The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was 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 section 271(1)(c). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.*

*The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was 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. Such contention could not be accepted 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 attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.*

*Therefore, the appeal filed by the revenue had no merits and was to be dismissed."*

8. In view of the above, we do not find any merit for imposition of penalty u/s.271(1)(c). The AO is directed to delete the same.

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

Order pronounced in the open court on this 31/05/ 2016.

**Sd/-  
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-  
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31/05/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /  
ITAT, Mumbai

सत्यापित प्रति //True Copy//